Oil Pollution Prevention and Response – Non-Transportation-Related Onshore and Offshore Facilities 40 CFR Part 112 (67 FR 47042, July 17, 2002)

Side-by-Side Comparison to Old Rule

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TABLE OF CONTENTS

SUBPART A	Applicability, Definitions, and General Requirements for all Facilities and all Types of Oils
§112.1	General applicability
§112.2	Definitions
§112.3	Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan
§112.4	Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator
§112.5	Amendment of Spill Prevention, Control, and Countermeasure Plan by owners or operators
§112.6	[Reserved]
§112.7	General requirements for Spill Prevention, Control, and Countermeasure Plans
SUBPART B	Requirements for Petroleum Oils and Non-petroleum Oils, Except Animal Fats and Oils and Greases, and Fish and Marine Mammal Oils; and Vegetable Oils (Including Oils from Seeds, Nuts, Fruits, and Kernels)
§112.8	Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities)
§112.9	Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities
§112.10	Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil drilling and workover facilities
§112.11	Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities
SUBPART C	Requirements for Animal Fats and Oils and Greases, and Fish and Marine Mammal Oils; and for Vegetable Oils, including Oils from Seeds, Nuts, Fruits, and Kernels
§112.12	Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities)
§112.13	Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities
§112.14	Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil drilling and workover facilities
§112.15	Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities
SUBPART D	Response Requirements
§112.20	Facility response plans
§112.21	Facility response training and drills/exercises
Appendix C	[Amended]
Appendix D	[Amended]
Appendix F	[Amended]

SPCC RULE TEXT COMPARISON

SUBPART A

Revised Rule	Old Rule
2. Part 112 is amended by designating §§112.1 through 112.7 as subpart A, adding a subpart heading and revising newly designated subpart A to read as follows: *SUBPART A - Applicability, Definitions, and General Requirements for all Facilities and all Types of Oils* *Sec.* *112.1 General applicability.* *112.2 Definitions.* *112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.* *112.4 Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator.* *112.5 Amendment of Spill Prevention, Control, and Countermeasure Plan by owners or operators.* *112.6 [Reserved].* *112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans.*	[No direct counterpart in old rule.]

Notes

- Reorganization: We reorganized the rule to clarify SPCC Plan requirements for different types of facilities, and to provide requirements for different types of oil. Subpart A consists of an applicability section, definitions, and general requirements for all facilities. Subparts B and C outline the requirements for different types of oils. Subpart B is for petroleum oils and non-petroleum oils, except for animal fats and vegetable oils. Subpart C is for animal fats and oils and greases, and fish and marine mammal oils; and for vegetable oils, including oils from seeds, nuts, fruits, and kernels. Subpart D is for response. Subparts B and C are divided into sections to reflect the differing types of facilities for each type of oil. Subpart D is for response requirements.

SPCC RULE TEXT COMPARISON

SECTION 112.1

Revised Rule	Old Rule
Sec. 112.1 General applicability. (a)(1) This part establishes procedures, methods, equipment, and other requirements to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or upon the navigable waters of the United States or adjoining shorelines**, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act)**. *(2) As used in this part, words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.*	Sec. 112.1 General applicability. (a) This part establishes procedures, methods and equipment and other requirements for equipment to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or upon the navigable waters of the United States or adjoining shorelines. . . . . .

Notes

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

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

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

Revised Rule	Old Rule
Sec. 112.1 General applicability. . . . . . . (b) Except as provided in paragraph (d) of this section, this part applies to *any owner or operator* of *a* non-transportation-related onshore or offshore *facility* engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, *using*, or consuming oil and oil products, which due to its location, could reasonably be expected to discharge oil *in quantities that may be harmful, as described* in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines**, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act) that has oil in:** **(1) Any aboveground container;** **(2) Any completely buried tank as defined in §112.2;** **(3) Any container that is used for standby storage, for seasonal storage, or for temporary storage, or not otherwise "permanently closed" as defined in §112.2;** **(4) Any "bunkered tank" or "partially buried tank" as defined in §112.2, or any container in a vault, each of which is considered an aboveground storage container for purposes of this part.**	Sec. 112.1 General applicability. . . . . . . (b) Except as provided in paragraph (d) of this section, this part applies to owners or operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil and oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines. . . . . . .

Notes

- Facilities: Section 311(j)(1)(C) of the statute authorizes and requires the President (and EPA, through delegation in Executive Order 12777, 56 FR 54757, October 22, 1991) to issue regulations consistent with the National Oil and Hazardous

Substances Pollution Contingency Plan, and consistent with maritime safety and with marine and navigation laws, which establish "procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore and offshore facilities, and to contain such discharges." This language authorizes the President to issue oil spill prevention rules which pertain to onshore facilities and offshore facilities and not just "equipment."

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

While section 311(j)(1)(C) of the Act may not explicitly mention jurisdictional criteria, section 311(b) of the Act does. Section 311(b) establishes as the policy of the United States that there shall be "no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United

States (including resources under the Magnuson Fishery Conservation and Management Act)." Thus, the location or "jurisdictional" criteria contained in §112.1(b) are appropriate for inclusion in the rule. EPA believes that the geographic extension of the rule to agree with statutory amendments is the proper course, and has finalized the rule as proposed.

- Use of Oil: We amended §112.1(b) to clarify that using oil (e.g., operationally) may subject a facility to SPCC jurisdiction as long as the other applicability criteria (e.g., oil storage capacity or location) apply. Such a facility might reasonably be expected to discharge oil as described in §112.1(b), and the prevention of discharges from such facility falls within the scope of the statute.

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

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

and also the needs of section 311(j)(1)(C) of the CWA.

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

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

Revised Rule	Old Rule
Sec. 112.1 General applicability. . . . . . . (c) As provided in section 313 *of the Clean Water Act (CWA)*, departments, agencies, and instrumentalities of the Federal government are subject to this part to the same extent as any person.	Sec. 112.1 General applicability. . . . . . . (c) As provided in section 313 (86 Stat. 875) departments, agencies, and instrumentalities of the Federal government are subject to these regulations to the same extent as any person, except for the provisions of Sec. 112.6. . . . . .

Notes

- Civil Penalties: The provision relating to civil penalties was rescinded on March 11, 1996, as it no longer accurately reflected the penalties provided for under section 311(b) of the Act, as amended by OPA (61 FR 9646). In addition, EPA believes that Federal agencies are not subject to penalties or fines under the CWA because the Federal government is not a "person" under sections 311(a)(7) or 502 of the CWA. Only "persons" (including owners or operators and persons in charge) are subject to such penalties. Although Federal agencies must comply with requirements of a CWA section 311 rule in accordance with CWA section 313, they are not subject to civil or criminal penalties or fines. *See* U.S. Department of Energy v. Ohio, 503 U.S. 607, 618 (1992) (because the CWA does not define "person" to include the United States, the civil penalty provisions are not applicable).

Revised Rule	Old Rule
Sec. 112.1 General applicability. . . . . . . (d) **Except as provided in paragraph (f) of this section,** this part does not apply to: (1) *The owner or operator of any facility, equipment, or operation that is* not subject to the jurisdiction of the Environmental Protection Agency *(EPA) under section 311(j)(1)(C) of the CWA,* as follows: (i) *Any* onshore or offshore *facility, that* due to *its* location, could not reasonably be expected to *have a discharge as described in paragraph (b) of this section*. This determination *must* be based solely upon consideration of the geographical *and location* aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, etc.) and *must* exclude consideration of manmade features such as dikes, equipment or other structures, which may serve to restrain, hinder, contain, or otherwise prevent a discharge *as described in paragraph (b) of this section.*	Sec. 112.1 General applicability. . . . . . . (d) This part does not apply to: (1) Facilities, equipment or operations which are not subject to the jurisdiction of the Environmental Protection Agency, as follows: (i) Onshore and offshore facilities, which, due to their location, could not reasonably be expected to discharge oil into or upon the navigable waters of the United States or adjoining shorelines. This determination shall be based solely upon a consideration of the geographical, locational aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, etc.) and shall exclude consideration of manmade features such as dikes, equipment or other structures which may serve to restrain, hinder, contain, or otherwise prevent a discharge of oil from reaching navigable waters of the United States or adjoining shorelines; and . . . . . .

Notes

- Manmade structures*:* To allow consideration of manmade structures (such as dikes, equipment, or other structures) to relieve a facility from being subject to the rule would defeat its preventive purpose. Because manmade structures may fail, thus putting the environment at risk in the event of a discharge, there is an unacceptable risk in using such structures to justify relieving a facility from the burden of preparing a prevention plan. Secondary containment structures should be part of the prevention plan.

- Groundwater: Groundwater underlying a facility that is directly connected hydrologically to navigable waters could trigger the requirement to produce an SPCC Plan based on geographic or locational aspects of the facility. EPA notes that 40 CFR part 280 and State programs approved under 40 CFR part 281 (the rules governing most completely buried tanks) have adequate emergency response provisions for regulated tanks and piping. Such regulations require corrective action, reporting, and recordkeeping requirements for any release from regulated tanks and piping. Also, 40 CFR parts 280 and 281 require various measures intended to prevent contamination that could result from releases from regulated tanks and piping. Although groundwater underlying a facility may eventually connect hydrologically to navigable waters, the requirements of 40 CFR part 280 and State programs approved under 40 CFR part 281 are intended to address the prevention of releases from underground storage tanks that might have an impact on groundwater and to require rapid response and corrective action at such sites if they compromise groundwater quality.

Revised Rule	Old Rule
Sec. 112.1 General applicability. . . . . . . (d) . . . (1) . . . (ii) *Any equipment, or operation of a* vessel or transportation-related onshore or offshore *facility* which *is* subject to *the* authority and control of the *U.S.* Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of *EPA*, dated November 24, 1971 *(Appendix A of this part).* *(iii) Any equipment, or operation of a vessel or onshore or offshore facility which is subject to the authority and control of the U.S. Department of Transportation or the U.S. Department of the Interior, as defined in the Memorandum of Understanding between the Secretary of Transportation, the Secretary of the Interior, and the Administrator of EPA, dated November 8, 1993 (Appendix B of this part).*	Sec. 112.1 General applicability. . . . . . . (d) . . . (1) . . . (ii) Equipment or operations of vessels or transportation-related onshore and offshore facilities which are subject to authority and control of the Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency, dated November 24, 1971, 36 FR 24000. . . . . . .

Notes

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

Revised Rule	Old Rule
Sec. 112.1 General applicability. . . . . . . (d) . . . (2) *Any facility* which, although otherwise subject to the jurisdiction of *EPA*, *meets* both of the following requirements: (i) The *completely* buried storage capacity of the facility is 42,000 gallons or less of oil. **For purposes of this exemption, the completely buried storage capacity of a facility excludes the capacity of a completely buried tank, as defined in §112.2, and connected underground piping, underground ancillary equipment, and containment systems, that is currently subject to all of the technical requirements of part 280 of this chapter or all of the technical requirements of a State program approved under part 281 of this chapter. The *completely buried storage capacity* of a facility also excludes the capacity of a container that is "permanently closed," as defined in §112.2.** (ii) The *aggregate aboveground* storage *capacity of* the facility is 1,320 gallons or less of oil. **For purposes of this exemption, only containers of oil 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," as defined in §112.2.**	Sec. 112.1 General applicability. . . . . . . (d) . . . (2) Those facilities which, although otherwise subject to the jurisdiction of the Environmental Protection Agency, meet both of the following requirements: (i) The underground buried storage capacity of the facility is 42,000 gallons or less of oil, and ii) The storage capacity, which is not buried, of the facility is 1,320 gallons or less of oil, provided no single container has a capacity in excess of 660 gallons. . . . . . .

Notes

- Partially buried tanks and bunkered tanks: Partially buried tanks and bunkered tanks should not be considered completely buried tanks and, therefore, excluded from SPCC provisions. Such tanks may suffer damage caused by differential corrosion of buried and non-buried surfaces greater than completely buried tanks, which could cause a discharge as described in §112.1(b). Such tanks are also not subject to secondary containment requirements under part

280 or a State program approved under 40 CFR part 281. There may also be accidents during loading or unloading operations, or overfills resulting in a discharge to navigable waters and adjoining shorelines. Furthermore, a failure of such a tank (caused by accident or vandalism) would be more likely to cause a discharge as described in §112.1(b).

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

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

- Reporting and recordkeeping: There are numerous reporting and recordkeeping requirements in the rules governing underground storage tanks, including corrective action plans; documentation of corrosion protection equipment; documentation of UST system repairs; and information concerning recent compliance with release detection requirements.

- Transportation rules: In addition to the EPA UST rules, the U.S. Department of Transportation has hazardous material regulations related to

driver training, emergency preparation, and incident reporting and emergency response. Training regulations, for example, can be found at 49 CFR part 172, and loading and unloading regulations can be found at 49 CFR 177.834 and 49 CFR 177.837. These regulations apply, for example, to truck drivers delivering gasoline or diesel fuel to gas stations with underground storage tanks.

· Piping, ancillary equipment, and containment systems: The scope of the proposed exemption for completely buried tanks includes the connected underground piping, underground ancillary equipment, and containment systems, in addition to the tank itself. This modification is consistent with the definition of underground storage tank system found at 40 CFR 280.12.

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

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

Minimum container size: The revised rule introduces a minimum container size. The 55 gallon container is the most widely used commercial bulk container, and these containers are easily counted. Containers below 55 gallons in capacity are typically end-use consumer containers. Fifty-five gallon containers are also the lowest size bulk container that can be handled by a human. Containers above that size typically require equipment for movement and handling.

We believe that it is not necessary to apply SPCC or FRP rules requiring measures like secondary containment, inspections, or integrity testing, to containers smaller than 55 gallons storing oil because a discharge from these containers generally poses a smaller risk to the environment. Furthermore, compliance with the rules for these containers could be extremely burdensome for an owner or operator and could upset manufacturing operations, while providing little or no significant increase in protection of human health or the environment. Many of these smaller containers are constantly being emptied, replaced, and relocated so that serious corrosion will likely soon be detected and undetected leaks become highly unlikely. While we realize that small discharges may harm the environment, depending on where and when the discharge occurs, we believe that this measure will allow facilities to concentrate on the prevention and containment of discharges of oil from those sources most likely to present a more significant risk to human health and the environment.

Including containers of 55 gallons or greater within the calculation for the regulatory threshold is necessary to ensure environmental protection. The result of a higher minimum size, in some cases, would be large amounts of aggregate capacity that would not be counted for SPCC purposes, and would therefore be unregulated, posing a threat to the environment.

EPA retains authority to require any facility subject to its jurisdiction under section 311(j) of the CWA to prepare and implement an SPCC Plan, or applicable part, to carry out the purposes of the Act.

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

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

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

  We raise the regulatory threshold realizing that discharges as described in §112.1(b) from small facilities may be harmful, depending on the surrounding environment. Among the factors remaining to mitigate any potential disasters are that small facilities no longer required to have SPCC Plans are still liable for cleanup costs and

damages from discharges as described in §112.1(b). We encourage those facilities exempted from today's rule to maintain SPCC Plans. Likewise, we encourage facilities becoming operable in the future with storage or use capacity below the regulatory threshold to develop Plans. We believe that SPCC Plans have utility and benefit for both the facility and the environment. But, we will no longer by regulation require Plans from exempted facilities.

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

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

Revised Rule	Old Rule
Sec. 112.1 General applicability. . . . . . . (d) . . . **(3) Any offshore oil drilling, production, or workover facility that is subject to the notices and regulations of the Minerals Management Service, as specified in the Memorandum of Understanding between the Secretary of Transportation, the Secretary of the Interior, and the Administrator of EPA, dated November 8, 1993 (Appendix B of this part).**	Sec. 112.1 General applicability. . . . . . . [No direct counterpart in old rule.]

Notes

- Background: We believe that the Minerals Management Service (MMS) will provide equivalent environmental protection for the facilities under its jurisdiction. MMS regulations require adequate spill prevention, control, and countermeasures that are directed more specifically to the facilities subject to MMS requirements.

Revised Rule	Old Rule
Sec. 112.1 General applicability. . . . . . . (d) . . . **(4) Any completely buried storage tank, as defined in §112.2, and connected underground piping, underground ancillary equipment, and containment systems, at any facility, that is subject to all of the technical requirements of part 280 of this chapter or a State program approved under part 281 of this chapter, except that such a tank must be marked on the facility diagram as provided in §112.7(a)(3), if the facility is otherwise subject to this part.** **(5) Any container with a storage capacity of less than 55 gallons of oil.**	Sec. 112.1 General applicability. . . . . . . [No direct counterpart in old rule.]

Notes

- Background (d)(4): Section 112.1(d)(4) is a companion paragraph to §112.1(d)(2)(i), for purposes of SPCC exemption. As in §112.1(d)(2)(i), we have also exempted connected underground piping, underground ancillary equipment, and containment systems subject to all of the technical requirements of part 280 or a State program approved under 40 CFR part 281. We also added a clause noting that these exempted tanks must be marked on the facility diagram as provided in §112.7(a)(3), if the facility is otherwise subject to this part.

- Background (d)(5): Section 112.1(d)(5) is a new section added in response to comments pertaining to the regulatory threshold/minimum container size issue discussed above. This section clarifies that any aboveground or completely buried container with capacity of less than 55 gallons is not subject to the rule. It is a companion rule to §112.1(d)(2)(ii), for purposes of SPCC exemption.

Revised Rule	Old Rule
Sec. 112.1 General applicability. . . . . . . (d) . . . **(6) Any facility or part thereof used exclusively for wastewater treatment and not used to satisfy any requirement of this part. The production, recovery, or recycling of oil is not wastewater treatment for purposes of this paragraph.**	Sec. 112.1 General applicability. . . . . . . [No direct counterpart in old rule.]

Notes

- Applicability of exemption: The revised rule exempts certain wastewater treatment facilities or parts thereof, if used exclusively for wastewater treatment and not used to meet any other requirement of part 112. No longer subject to the rule would be wastewater treatment facilities or parts thereof such as treatment systems at POTWs and industrial facilities treating oily wastewater.

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

  Many affected facilities are subject to a BMP prepared under an NPDES permit. Some of those plans provide protections equivalent to SPCC Plans. BMPs are additional conditions which may supplement effluent limitations in NPDES permits. Under section 402(a)(1) of the CWA, BMPs may be imposed when the Administrator determines that such conditions are necessary to carry out the provisions of the Act. See 40 CFR 122.44(k). CWA section 304(e) authorizes EPA to promulgate BMPs as effluent limitations guidelines. NPDES rules provide for

BMPs when: authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances; numeric limitations are infeasible; or, the practices are reasonably necessary to achieve effluent limitations and standards to carry out the purposes of the CWA. In addition, each NPDES or state equivalent permit for a wastewater treatment system must contain operation and maintenance requirements to reduce the risk of discharges. 40 CFR 122.41(e).

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

- Facilities not covered by exemption: However, if a wastewater facility or part thereof is used for the purpose of storing oil, then there is no exemption, and its capacity must be counted as part of the storage capacity of the facility. Any oil storage capacity associated with or incidental to these wastewater treatment facilities or parts thereof continues to be subject to part 112. At permitted wastewater treatment facilities, storage capacity includes bulk storage containers, hydraulic equipment associated with the treatment process, containers used to store oil which feed an emergency generator associated

with wastewater treatment, and slop tanks or other containers used to store oil resulting from treatment. Some flow through treatment such as oil/water separators have a storage capacity within the treatment unit itself. This storage capacity is subject to the rule. An example of a wastewater treatment unit that functions as storage is a treatment unit that accumulates oil and performs no further treatment, such as a bulk storage container used to separate oil and water mixtures, in which oil is stored in the container after removal of the water in theseparation/treatment process.

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

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

environmental risks to birds and other wildlife.

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

Whether a wastewater treatment facility or part thereof is used exclusively for wastewater treatment (i.e., not storage or other use of oil) or used to satisfy a requirement of part 112 will often be a facility specific determination based on the activity associated with the facility or part thereof. Only the portion of the facility (except at an oil production, oil recovery, or oil recycling facility) used exclusively for wastewater treatment and not used to meet any part 112 requirement is exempt from part 112. Storage or use of oil at such a facility will continue to be subject to part 112.·

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

Revised Rule	Old Rule
Sec. 112.1 General applicability. . . . . . . (e) This part *establishes requirements* for the preparation and implementation of Spill Prevention, Control, and Countermeasure *(SPCC)* Plans. SPCC *Plans are* designed to complement existing laws, regulations, rules, standards, policies, and procedures pertaining to safety standards, fire prevention, and pollution prevention rules. *The purpose of an SPCC Plan is to* form a *comprehensive* Federal/State spill prevention program *that minimizes the potential for discharges*. *The SPCC Plan must address all relevant spill prevention, control, and countermeasures necessary at the specific facility*. Compliance with this part does not in any way relieve the owner or operator of an onshore or an offshore facility from compliance with other Federal, State, or local laws.	Sec. 112.1 General applicability. . . . . . . (e) This part provides for the preparation and implementation of Spill Prevention Control and Countermeasure Plans prepared in accordance with Sec. 112.7, designed to complement existing laws, regulations, rules, standards, policies and procedures pertaining to safety standards, fire prevention and pollution prevention rules, so as to form a comprehensive balanced Federal/State spill prevention program to minimize the potential for oil discharges. Compliance with this part does not in any way relieve the owner or operator of an onshore or an offshore facility from compliance with other Federal, State or local laws. . . . . .

Notes

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

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

Revised Rule	Old Rule
Sec. 112.1 General applicability. . . . . . . **(f) Notwithstanding paragraph (d) of this section, the Regional Administrator may require that the owner or operator of any facility subject to the jurisdiction of EPA under section 311(j) of the CWA prepare and implement an SPCC Plan, or any applicable part, to carry out the purposes of the CWA.** **(1) Following a preliminary determination, the Regional Administrator must provide a written notice to the owner or operator stating the reasons why he must prepare an SPCC Plan, or applicable part. The Regional Administrator must send such notice to the owner or operator by certified mail or by personal delivery. If the owner or operator is a corporation, the Regional Administrator must also mail a copy of such notice to the registered agent, if any and if known, of the corporation in the State where the facility is located.** **(2) Within 30 days of receipt of such written notice, the owner or operator may provide information and data and may consult with the Agency about the need to prepare an SPCC Plan, or applicable part.** **(3) Within 30 days following the time under paragraph (f)(2) of this section within which the owner or operator may provide information and data and consult with the Agency about the need to prepare an SPCC Plan, or applicable part, the Regional Administrator must make a final determination regarding whether the owner or operator is required to prepare and implement an SPCC Plan, or applicable part. The Regional Administrator must send the final determination to the owner or operator by certified mail or by personal delivery. If the owner or operator is a corporation, the Regional Administrator must also mail a copy of the final**	Sec. 112.1 General applicability. . . . . . . [No direct counterpart in old rule.]

determination to the registered agent, if any and if known, of the corporation in the State where the facility is located. **(4) If the Regional Administrator makes a final determination that an SPCC Plan, or applicable part, is necessary, the owner or operator must prepare the Plan, or applicable part, within six months of that final determination and implement the Plan, or applicable part, as soon as possible, but not later than one year after the Regional Administrator has made a final determination.** **(5) The owner or operator may appeal a final determination made by the Regional Administrator requiring preparation and implementation of an SPCC Plan, or applicable part, under this paragraph. The owner or operator must make the appeal to the Administrator of EPA within 30 days of receipt of the final determination under paragraph (f)(3) of this section from the Regional Administrator requiring preparation and/or implementation of an SPCC Plan, or applicable part. The owner or operator must send a complete copy of the appeal to the Regional Administrator at the time he makes the appeal to the Administrator. The appeal must contain a clear and concise statement of the issues and points of fact in the case. In the appeal, the owner or operator may also provide additional information. The additional information may be from any person. The Administrator may request additional information from the owner or operator. The Administrator must render a decision within 60 days of receiving the appeal or additional information submitted by the owner or operator and must serve the owner or operator with the decision made in the appeal in the manner described in paragraph (f)(1) of this section.**	

Notes: Background: This is a new section that allows the Regional Administrators (RAs) to require preparation of an entire SPCC Plan, or applicable part, by the owner or

operator of an otherwise exempted facility, that is subject to the jurisdiction of EPA under section 311(j) of the CWA. The proposal stems from the 1988 Interagency SPCC Task Force and subsequent GAO report, "Inland Oil Spills" (GAO/RCED-89-65).

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

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

- Partial Plans: We clarify that the RA may require partial Plans to cover situations where the preparation of only a partial Plan may be necessary, such as to supplement an existing document other than a Plan or to address a particular environmental threat. The decision to require a Plan (or partial Plan) could be based on

the presence of environmental concerns not adequately addressed under UST or NPDES regulations, or due to other relevant environmental factors. The section may be invoked when the RA determines it is necessary to "carry out the purposes of the Act." The decision to require a partial Plan is separate from a decision to require an amendment to a Plan. In one case, the assumption is that a Plan doesn't exist; in the other, that an existing Plan needs amendment.

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

- Appeals process: An appeals process is appropriate for this section. Therefore we have added a new paragraph (f)(5) to include such a process, and have provided time frames for the process. The appeals process is modeled upon current §112.4(f).

SPCC RULE TEXT COMPARISON

SECTION 112.2

Revised Rule	Old Rule
Sec. 112.2 Definitions. For the purposes of this part : Adverse weather means weather conditions that make it difficult for response equipment and personnel to clean up or remove spilled oil, and that *must be* considered when identifying response systems and equipment in a response plan for the applicable operating environment. Factors to consider include significant wave height as specified in Appendix E to this part *(as appropriate)*, ice conditions, temperatures, weather-related visibility, and currents within the area in which the systems or equipment is intended to function. **Alteration means any work on a container involving cutting, burning, welding, or heating operations that changes the physical dimensions or configuration of the container.** Animal fat means a non-petroleum oil, fat, or grease of animal, fish, or marine mammal origin.	Sec. 112.2 Definitions. For the purposes of this part: Adverse weather means the weather conditions that make it difficult for response equipment and personnel to cleanup or remove spilled oil, and that will be considered when identifying response systems and equipment in a response plan for the applicable operating environment. Factors to consider include significant wave height as specified in Appendix E to this part, as appropriate, ice conditions, temperatures, weather-related visibility, and currents within the area in which the systems or equipment are intended to function. Animal fat means a non-petroleum oil, fat, or grease of animal, fish, or marine mammal origin. . . . . .

Notes

- Alteration: We originally proposed a definition of "alteration" in 1993, to ensure against brittle fracture. Examples of alteration include the addition of manways and nozzles greater than 12-inch nominal pipe size and an increase or decrease in tank shell height (58 FR 8843.).

- Related equipment: We have not included the term "or related equipment" in the definition of "alteration" to conform with API Standard 653, which does not include alterations of related equipment as a criterion for brittle fracture evaluation.

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

Revised Rule	Old Rule
Sec. 112.2 Definitions. . . . . . . **<u>Breakout tank</u> means a container used to relieve surges in an oil pipeline system or to receive and store oil transported by a pipeline for reinjection and continued transportation by pipeline.** **<u>Bulk storage container</u> means any container used to store oil. These containers are used for purposes including, but not limited to, the storage of oil prior to use, while being used, or prior to further distribution in commerce. Oil-filled electrical, operating, or manufacturing equipment is not a bulk storage container.**	Sec. 112.2 Definitions. . . . . . . [No direct counterpart in old rule.]

Notes

- <u>Rationale for new definitions</u>: The definitions of "breakout tank" and "bulk storage container" are intended to clarify the distinction between facilities regulated by DOT and EPA.

- <u>Breakout tanks</u>: Breakout tanks are used mainly to compensate for pressure surges or to control and maintain pressure through pipelines. They are also sometimes used for bulk storage. These tanks are frequently in-line, and may be regulated by EPA, DOT, or both. When a breakout tank is used for both storage and for pipeline control, it becomes in itself a "complex," and is regulated as such. See §112.1(d)(1)(ii).

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

  A breakout tank that is used only to relieve surges in an oil pipeline system or to receive and store oil

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

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

- Bulk storage containers: The rule refers to "container" rather than "tank", because "container" is more accurate. Many containers storing oil are not tanks, but provide bulk storage. A bulk storage container may be either aboveground, partially buried, bunkered, or completely buried. The definition of "bulk storage container" should not be confused with the definitions of "container" used in several fire codes. Sometimes those codes limit a container to one below a certain size. See for example, the BOCA National Fire Prevention Code, section F-2302.1 (1999) and NFPA 30 section 1-6 (1996). The definition adopted in today's rule is broader than the definitions in the codes in that it is not limited to a particular amount of storage capacity.

- Electrical Equipment: Electrical equipment is not bulk storage. See the above discussion on the applicability of the rule to electrical and other operating equipment under §112.1(b). See also the definition of "bulk storage container" in §112.2. For a discussion of minimum size containers to which the rule applies, see the discussion under §112.1(d)(2)(ii).

Revised Rule	Old Rule
Sec. 112.2 Definitions. . . . . . . **<u>Bunkered tank</u> means a container constructed or placed in the ground by cutting the earth and re-covering the container in a manner that breaks the surrounding natural grade, or that lies above grade, and is covered with earth, sand, gravel, asphalt, or other material. A bunkered tank is considered an aboveground storage container for purposes of this part. <u>Completely buried tank</u> means any container completely below grade and covered with earth, sand, gravel, asphalt, or other material. Containers in vaults, bunkered tanks, or partially buried tanks are considered aboveground storage containers for purposes of this part.**	Sec. 112.2 Definitions. . . . . . . [No direct counterpart in old rule.]

Notes

- <u>Bunkered tank</u>: This definition clarifies that bunkered tanks are a subset of partially buried tanks, and as such, subject to part 112 as aboveground tanks.

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

- Consistency with the definition of underground tanks in 4 CFR part 280: The scope of the part 112 exclusion for underground tanks is not consistent with the scope of the definition of "underground storage tank" in part 280. The programs are designed for different purposes and, therefore, the definitions used will necessarily differ. To eliminate confusion with the part 280 definition, we use the term "completely buried tank" instead of "underground storage tank".

  Part 280 includes within its UST definition tanks that have a volume up to 90 percent above the surface of the ground, which are considered aboveground tanks for part 112 purposes. Part 280 also regulates underground storage tanks containing hazardous substances, while the SPCC program regulates only facilities storing or using oil as defined in CWA section 311. The SPCC program regulates facilities with relatively large completely buried storage capacity, while the bulk of facilities regulated under part 280 are small capacity facilities such as gasoline filling stations. The SPCC program also regulates other types of containers and facilities which part 280 excludes, such as: tanks used for storing heating oil for consumptive use on the premises where stored; certain pipeline complexes where oil is stored; and, oil-water separators.

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

- Other completely buried tanks excluded from the part 280 UST definition: Tanks in underground rooms or above the floor surface, or in other

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

Revised Rule	Old Rule
Sec. 112.2 Definitions. . . . . . . Complex means a facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the *CWA*. **Contiguous zone means the zone established by the United States under Article 24 of the Convention of the Territorial Sea and Contiguous Zone, that is contiguous to the territorial sea and that extends nine miles seaward from the outer limit of the territorial area.** Contract or other approved *means means*: (1) A written contractual agreement with an oil spill removal *organization* that identifies and ensures the availability of the necessary personnel and equipment within appropriate response times; and/or (2) A written certification by the owner or operator that the necessary personnel and equipment resources, owned or operated by the facility owner or operator, are available to respond to a discharge within appropriate response times; and/or (3) Active membership in a local or regional oil spill removal *organization* that has identified and ensures adequate access through such membership to necessary personnel and equipment to respond to a discharge within appropriate response times in the specified geographic area; and/or (4) *Any* other specific arrangement approved by the Regional Administrator upon request of the owner or operator.	Sec. 112.2 Definitions. . . . . . . Complex means a facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the Clean Water Act. Contract or other approved mean (1) A written contractual agreement with an oil spill removal organization(s) that identifies and ensures the availability of the necessary personnel and equipment within appropriate response times; and/or (2) A written certification by the owner or operator that the necessary personnel and equipment resources, owned or operated by the facility owner or operator, are available to respond to a discharge within appropriate response times; and/or (3) Active membership in a local or regional oil spill removal organization(s) that has identified and ensures adequate access through such membership to necessary personnel and equipment to respond to a discharge within appropriate response times in the specified geographic areas; and/or (4) Other specific arrangements approved by the Regional Administrator upon request of the owner or operator. . . . . .

Notes

- Contiguous zone: The revised rule refers to the definition of "contiguous zone" to conform with 1978 amendments to the CWA, and the 1990 amendments to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP)

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

Revised Rule	Old Rule
Sec. 112.2 Definitions. . . . . . . Discharge includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping *of oil, but excludes discharges in compliance with a permit under section 402 of the CWA; discharges resulting from circumstances identified, reviewed, and made a part of the public record with respect to a permit issued or modified under section 402 of the CWA, and subject to a condition in such permit; or continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the CWA, that are caused by events occurring within the scope of relevant operating or treatment systems*. For purposes of this part, the term discharge shall not include any discharge of oil *that* is authorized by a permit issued *under* section 13 of the River and Harbor Act of 1899 *(33 U.S.C. 407).*	Sec. 112.2 Definitions. . . . . . . Discharge includes but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping. For purposes of this part, the term discharge shall not include any discharge of oil which is authorized by a permit issued pursuant to section 13 of the River and Harbor Act of 1899 (30 Stat. 1121, 33 U.S.C. 407), or sections 402 or 405 of the FWPCA Amendments of 1972 (86 Stat. 816 et seq., 33 U.S.C. 1251 et seq.). . . . . . .

Notes

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

  Foreseeable or chronic point source discharges that are permitted under section 402 of the CWA, and that are either due to causes associated with the manufacturing or other commercial activities in which the discharger is engaged or due to the

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

- Editorial changes and clarifications: We revised the citation for the River and Harbor Act of 1899 so that it refers only to the U.S. Code, and have deleted the reference to the Statutes at Large.

Revised Rule	Old Rule
Sec. 112.2 Definitions. . . . . . . **<u>Facility</u> means any mobile or fixed, onshore or offshore building, structure, installation, equipment, pipe, or pipeline (other than a vessel or a public vessel) used in oil well drilling operations, oil production, oil refining, oil storage, oil gathering, oil processing, oil transfer, oil distribution, and waste treatment, or in which oil is used, as described in Appendix A to this part. The boundaries of a facility depend on several site-specific factors, including, but not limited to, the ownership or operation of buildings, structures, and equipment on the same site and the types of activity at the site**.	Sec. 112.2 Definitions. . . . . . . [No direct counterpart in old rule.]

Notes

- <u>Basis for definition</u>: The definition of "facility" is based on the Memorandum of Understanding (MOU) between the Secretary of DOT and the EPA Administrator, dated November 24, 1971 (36 FR 24080). A discussion of the types of facilities covered is found in Appendix A to the rule.

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

- <u>Electrical or operational equipment</u>: Electrical equipment "using" oil as opposed to "storing" falls within the definition of "facility" in part 112.

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

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

  While gathering lines, flowlines, and waste treatment equipment are subject to secondary containment requirements, the appropriate method of secondary containment is an engineering question. Double-walled piping may be an option, but is not required by these rules. The owner or operator and Professional

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

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

Revised Rule	Old Rule
Sec. 112.2 Definitions. . . . . . . <u>Fish and wildlife and sensitive environments</u> means areas that may be identified *by their* legal designation or by evaluations of Area Committees (for planning) or members of the Federal On-Scene Coordinator's spill response structure (during responses). These areas may include wetlands, National and State parks, critical habitats for endangered *or* threatened species, wilderness and natural resource areas, marine sanctuaries and estuarine reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, recreational areas, national forests, Federal and State lands that are research national areas, heritage program areas, land trust areas, and historical and archaeological sites and parks. These areas may also include unique habitats such as aquaculture sites and agricultural surface water intakes, bird nesting areas, critical biological resource areas, designated migratory routes, and designated seasonal habitats. <u>Injury</u> means a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource resulting either directly or indirectly from exposure to a *discharge*, or exposure to a product of reactions resulting from a *discharge*. <u>Maximum extent practicable</u> means *within* the limitations used to determine oil spill planning resources and response times for on-water recovery, shoreline protection, and cleanup for worst case discharges from onshore non-transportation-related facilities in adverse weather. It *includes* the planned capability to respond to a worst case discharge in adverse weather, as contained in a response plan that meets the requirements in §112.20 or in a specific plan approved by the Regional Administrator. *<u>Navigable waters</u> means the waters of the*	Sec. 112.2 Definitions. . . . . . . <u>Fish and wildlife and sensitive environments</u> means areas that may be identified by either their legal designation or by evaluations of Area Committees (for planning) or members of the Federal On-Scene Coordinator's spill response structure (during responses). These areas may include wetlands, National and State parks, critical habitats for endangered/ threatened species, wilderness and natural resource areas, marine sanctuaries and estuarine reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, recreational areas, national forests, Federal and State lands that are research national areas, heritage program areas, land trust areas, and historical and archeological sites and parks. These areas may also include unique habitats such as: aquaculture sites and agricultural surface water intakes, bird nesting areas, critical biological resource areas, designated migratory routes, and designated seasonal habitats. <u>Injury</u> means a measurable adverse change, either long- or short- term, in the chemical or physical quality or the viability of a natural resource resulting either directly or indirectly from exposure to a discharge of oil, or exposure to a product of reactions resulting from a discharge of oil. <u>Maximum extent practicable</u> means the limitations used to determine oil spill planning resources and response times for on-water recovery, shoreline protection, and cleanup for worst case discharges from onshore non-transportation-related facilities in adverse weather. It considers the planned capability to respond to a worst case discharge in adverse weather, as contained in a response plan that meets the requirements in Sec. 112.20 or in a specific plan approved by the Regional Administrator.

United States, including the territorial seas. (1) *The term* includes:(i) *All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters subject to the ebb and flow of the tide;* (ii) *All interstate waters, including interstate wetlands;* (iii) *All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters:* (A) *That are or could be used by interstate or foreign travelers for recreational or other purposes; or* (B) *From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or,* (C) *That are or could be used for industrial purposes by industries in interstate commerce;* *(iv) All impoundments of waters otherwise defined as waters of the United States under this section;* *(v) Tributaries of waters identified in paragraphs (1)(i) through (1)(iv) of this definition;* *(vi) The territorial sea; and* *(vii) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6) of this definition.* *(2) Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds which also meet the criteria of this definition) are not waters of the United States. Navigable waters do not include prior converted cropland.* Notwithstanding the determination of an area's status as prior converted cropland by any other Federal agency, for the purposes of the CWA, the final authority regarding CWA jurisdiction remains with EPA.	The term navigable waters of the United States means navigable waters as defined in section 502(7) of the FWPCA, and includes: (1) All navigable waters of the United States, as defined in judicial decisions prior to passage of the 1972 Amendments to the FWPCA (Pub. L. 92-500), and tributaries of such waters; (2) Interstate waters; (3) Intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and (4) Intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce. Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA. . . . . .
Notes	

- Rationale for revised definition of "navigable waters": We revised the definition of "navigable waters" to have the part 112 definition track the definition of "navigable waters" in 40 CFR part 110, which deals with the discharge of oil.

- Clarification of the meaning of navigable waters, maps: We clarify what we mean by navigable waters by describing the characteristics of navigable waters and by listing examples of navigable waters. We also note in the definition that certain waste treatment systems are not navigable waters. We are unable to provide a map to identify all navigable waters because not all such waters have been identified on a map. However, the rule provides guidelines as to where such waters may be found.

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

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

Revised Rule	Old Rule
Sec. 112.2 Definitions. . . . . . . Non-petroleum oil means oil of any kind that is not petroleum-based, including but not limited to: Fats, oils, and greases of animal, fish, or marine mammal origin; and vegetable oils, including oils from seeds, nuts, fruits, and kernels. Offshore facility means any facility of any kind *(other than a vessel or public vessel)* located in, on, or under any of the navigable waters of the United States, *and any facility of any kind that is subject to the jurisdiction of the United States and is located in, on, or under any other waters.*	Sec. 112.2 Definitions. . . . . . . Non-petroleum oil means oil of any kind that is not petroleum-based, including but not limited to: Fats, oils, and greases of animal, fish, or marine mammal origin; and vegetable oils, including oils from seeds, nuts, fruits, and kernels. Offshore facility means any facility of any kind located in, on, or under any of the navigable waters of the United States, which is not a transportation-related facility. . . . . .

Notes

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

- CWA definition: The part 112 definition of "offshore facility", except for minor editorial changes, is identical to the CWA definition. There is no difference between the substance of the part 112 definition and the CWA definition.

Revised Rule	Old Rule
Sec. 112.2 Definitions. . . . . . . Oil means oil of any kind or in any form, including, but not limited to: *fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and, other oils and greases, including* petroleum, fuel oil, sludge**,** *synthetic oils, mineral oils,* oil refuse, or oil mixed with wastes other than dredged spoil.	Sec. 112.2 Definitions. . . . . . . Oil means oil of any kind or in any form, including, but not limited to petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil. . . . . .

Notes

- Edible Oil Regulatory Reform Act (EORRA): In response to Edible Oil Regulatory Reform Act (EORRA) of 1995 (33 U.S.C. 2720) requirements, we have reworded the definition to include the categories of oil included in EORRA. Those categories are: 1) petroleum oils, (2) animal fats and vegetable oils; and, 3) other non-petroleum oils and greases. Animal fats include fats, oils, and greases of animal origin (for example, lard and tallow), fish (for example, cod liver oil), or marine mammal origin (for example, whale oil). Vegetable oils include oils of vegetable origin, including oils from seeds, nuts, fruits, and kernels. Examples of vegetable oils include: corn oil, rapeseed oil, coconut oil, palm oil, soy bean oil, sunflower seed oil, cottonseed oil, and peanut oil. Other non-petroleum oils and greases include coal tar, creosote, silicon fluids, pine oil, turpentine, and tall oils. Petroleum oils include crude and refined petroleum products, asphalt, gasoline, fuel oils, mineral oils, naphtha, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. The revised definition imposes no new requirements, because all oils have always been subject to the substantive requirements of the rule.

  EORRA requires that Federal agencies establish separate classes for at least these three types of oils. It further requires agencies to differentiate between those classes of oil in relation to their environmental effects, and their physical,

chemical, biological, and other characteristics. EPA has provided new subparts within part 112 to facilitate differentiation between the categories of oil listed in EORRA. In an advance notice of proposed rulemaking, published on April 8, 1999 (64 FR 17227), we requested ideas on how to differentiate among the SPCC requirements for facilities storing or using the various categories of oil. These ideas for further differentiation will be considered in a future rulemaking.

- What is oil: EPA interprets the definition of oil to include all types of oil, in whatever form, solid or liquid. That includes synthetic oils, mineral oils, vegetable oils, animal fats, petroleum derivatives, etc.
- Specific substances: Asphaltic cement is oil because it is a petroleum-based product and exhibits oil-like characteristics. A discharge of asphaltic cement may violate applicable water quality standards, or cause a film or sheen or discoloration of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. Aromatic hydrocarbons may or may not be oil, depending on their physical characteristics and environmental effects. Some aromatic hydrocarbons are hazardous substances. Bilge water that contains sufficient oil such that its discharge would violate the standards set out in 40 CFR 110.3 is considered oil. The percentage of oil concentration in the water is not determinative for the purpose of the definition or the discharge standards.

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

- Positions on previously suggested exclusions: While States may choose to regulate all oils or some oils, the CWA definition is designed to prevent the discharge of all oils.

A definition based on liquidity would exclude solid oils, such as certain animal fats, a result that would be inconsistent with Congressional intent.

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

EPA must address all types of oils, including animal fats and vegetable oils, since they can harm the environment in many ways.

Oil can coat the feathers of birds, the fur of mammals and cause drowning and hypothermia and increased vulnerability to starvation and predators from lack of mobility. Oils can act on the epithelial tissue of fish, accumulate on gills, and prevent respiration.

The oil coating of surface waters can interfere with natural processes, oxygen diffusion/reaeration and photosynthesis. Organisms and algae coated with oil may settle to the bottom with suspended solids along with other oily substances that can destroy benthic organisms and interfere with spawning areas. Oils can increase biological or chemical oxygen demand and deplete the water of oxygen sufficiently to kill fish and other aquatic organisms.

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

Oils can taint the flavor of fish for human consumption and cause intestinal lesions in fish from laxative properties. Tainted flavor of fish used for human consumption and the causation of rancid odors are public health or welfare concerns within the scope of our rules. Tainted flavor of fish used for human consumption may indicate a

disease in the fish which could render them inedible and thus have a substantial impact on the fishermen who harvest them and communities who may rely on them for a food supply. Oils can foul shorelines and beaches. Oil discharges can create rancid odors. Rancid odors may cause both health impacts and environmental impacts. For example, the 1991 Wisconsin Butter Fire and Spill resulted in a discharge of melted butter and lard. After the cleanup was largely completed, the Wisconsin Department of Natural Resources declared as hazardous substances the thousands of gallons of melted butter that ran offsite and the mountain of damaged and charred meat products spoiling in the hot sun and creating objectionable odors. The Wisconsin DNR stated that these products posed an imminent threat to human health and the environment. 62 FR 54526.

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

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

Revised Rule	Old Rule
Sec. 112.2 Definitions. . . . . . . Oil Spill Removal Organization means an entity that provides oil spill response resources, and includes any for-profit or not-for-profit contractor, cooperative, or in-house response resources that have been established in a geographic area to provide required response resources. Onshore facility means any facility of any kind located in, on, or under any land within the United States, other than submerged *lands*. Owner or operator means any person owning or operating an onshore facility or an offshore facility, and in the case of any abandoned offshore facility, the person who owned or operated *or maintained* the facility immediately prior to such abandonment.	Sec. 112.2 Definitions. . . . . . . Oil Spill Removal Organization means an entity that provides oil spill response resources, and includes any for-profit or not-for-profit contractor, cooperative, or in-house response resources that have been established in a geographic area to provide required response resources. Onshore facility means any facility of any kind located in, on, or under any land within the United States, other than submerged lands, which is not a transportation-related facility. Owner or operator means any person owning or operating an onshore facility or an offshore facility, and in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment. . . . . .

Notes

- Editorial change: We deleted as unnecessary surplus the reference to the facility not being transportation-related.

Revised Rule	Old Rule
Sec. 112.2 Definitions. . . . . . . **<u>Partially buried tank</u> means a storage container that is partially inserted or constructed in the ground, but not entirely below grade, and not completely covered with earth, sand, gravel, asphalt, or other material. A partially buried tank is considered an aboveground storage container for purposes of this part.**	Sec. 112.2 Definitions. . . . . . . [No direct counterpart in old rule.]

Notes

- <u>Rationale for definition</u>: The intent of the definition of "partially buried tank" is to clarify the distinction between partially buried tanks and underground storage tanks. We have renamed underground tanks in this rule as "completely buried tanks" – i.e., those tanks completely covered with earth. Partially buried tanks are subject to the SPCC rule the same as aboveground containers.

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

Revised Rule	Old Rule
Sec. 112.2 Definitions. . . . . . . **<u>Permanently closed</u> means any container or facility for which:** **(1) All liquid and sludge has been removed from each container and connecting line; and** **(2) All connecting lines and piping have been disconnected from the container and blanked off, all valves (except for ventilation valves) have been closed and locked, and conspicuous signs have been posted on each container stating that it is a permanently closed container and noting the date of closure.**	Sec. 112.2 Definitions. . . . . . . [No direct counterpart in old rule.]

Notes

- <u>Background</u>: The intent of the definition of "permanently closed" is to clarify the scope of facilities and tanks or containers excluded from coverage under the SPCC rule. Permanently closed containers are those containers which are no longer capable of storing or using oil. Permanently closed facilities are those facilities which are no longer capable of storing or using oil. In permanently closed containers and facilities, physical changes have been made so that storage capacity or use is rendered impossible. Therefore, the definition describes those changes that must have occurred before a container or facility is "permanently closed." Containers that are only closed temporarily may be returned to storage purposes and thus may present a threat of discharge. Therefore, they will continue to be subject to the rule.

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

- <u>Connecting lines</u>: Connecting lines that have been emptied of oil, and have been disconnected and blanked off, are considered permanently

closed.

- Explosive vapors: To help prevent a buildup of explosive vapors, the definition provides that ventilation valves need not be closed.

- Retroactivity: We believe that containers that have been permanently closed according to the standards prescribed in the rule qualify for the designation of "permanently closed," whether they have been closed before or after the effective date of the rule. Containers that cannot meet the standards prescribed in the rule will not qualify as permanently closed. To clarify when a container has been closed, the rule requires that the sign noting closure show the date of such closure. The date of such closure must be noted whether it occurred before or after the effective date of this provision. Some States and localities require a permit for tank closure. A document noting a State closure inspection may serve as evidence of container closure if it is dated.

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

Revised Rule	Old Rule
Sec. 112.2 Definitions. . . . . . . Person includes an individual, firm, corporation, association, or partnership. Petroleum oil means petroleum in any form, including but not limited to crude oil, fuel oil, mineral oil, sludge, oil refuse, and refined products. **Production facility means all structures (including but not limited to wells, platforms, or storage facilities), piping (including but not limited to flowlines or gathering lines), or equipment (including but not limited to workover equipment, separation equipment, or auxiliary non-transportation-related equipment) used in the production, extraction, recovery, lifting, stabilization, separation or treating of oil, or associated storage or measurement, and located in a single geographical oil or gas field operated by a single operator.** Regional Administrator means the Regional Administrator of the Environmental Protection *Agency, in* and for the Region in which the facility is located.	Sec. 112.2 Definitions. . . . . . . Person includes an individual, firm, corporation, association, and a partnership. Petroleum oil means petroleum in any form, including but not limited to crude oil, fuel oil, mineral oil, sludge, oil refuse, and refined products. Regional Administrator means the Regional Administrator of the Environmental Protection Agency, or his designee, in and for the Region in which the facility is located. . . . . .

Notes

Flowlines and gathering lines, wells and separators: These structures or equipment are integral parts of production facilities and should therefore be included in the definition. We do not believe that the installation of structures and equipment to prevent discharges around gathering lines and flowlines may not be practicable, and that EPA will be flooded with contingency plans. First of all, secondary containment may be practicable. In §112.7(c), we list sorbent materials, drainage systems, and other equipment as possible forms of secondary containment systems. We realize that in many cases, secondary containment may not be practicable. If secondary containment is not practicable, an owner or operator must provide in the SPCC Plan a contingency plan following the provisions of part 109, and otherwise comply with §112.7(d). We do not require an owner or operator

to provide contingency plans as a matter of course to the Regional Administrator. Therefore, an owner or operator will rarely have to submit a contingency plan to EPA. The contingency plan an owner or operator does provide when secondary containment is not practicable for flowlines and gathering lines should rely on strong maintenance, corrosion protection, testing, recordkeeping, and inspection procedures to prevent and quickly detect discharges from such lines. It should also provide for the quick availability of response equipment.

- DOT definition: We developed the definition of "production facility" to be consistent with the DOT definition, found at 49 CFR 195.2. For example, we added the uses ("production, extraction, recovery, lifting, stabilization, separation, or treating") of the piping and equipment detailed in DOT rule. We also reflect EPA jurisdiction. We added the word "structure," which was not in the DOT definition, to cover necessary parts of a production facility. We also added examples of types of piping, structures, and equipment. These examples are not an exclusive list of the possible piping, structures, or equipment covered under the definition. The new definition encompasses all those facilities that would have been covered under both former proposed definitions.

- Single oil or gas field, single operator: "A single geographical oil or gas field" may consist of one or more natural formations containing oil. The determination of its boundaries is area-specific. Such formation may underlie one or many facilities, regardless of whether any natural or man-made physical geographical barriers on the surface intervene such as a mountain range, river, or road.

  An "owner" or "operator" is defined in §112.2 as any "person owning or operating an onshore facility or an offshore facility, and in the case of any abandoned offshore facility, the person who owned or operated or maintained such facility immediately prior to abandonment." A "person" is not restricted to a single natural person. "Person" is a defined term in the rule (at §112.2) which includes an individual, firm, corporation, association, or partnership. Nothing in the definition would preclude an owner or operator from combining elements of a production

facility into one SPCC Plan with an identification of the wells to which that Plan applies.

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

Revised Rule	Old Rule
Sec. 112.2 Definitions. . . . . . . **<u>Repair</u> means any work necessary to maintain or restore a container to a condition suitable for safe operation, other than that necessary for ordinary, day-to-day maintenance to maintain the functional integrity of the container and that does not weaken the container.**	Sec. 112.2 Definitions. . . . . . . [No direct counterpart in old rule.]

Notes

- <u>Background</u>: In 1993, we proposed a definition of "repair" in conjunction with the proposed rule for brittle fracture evaluation.

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

- <u>Industry standards</u>: Industry standards that may be helpful in understanding the definition of repair (and reconstruction) include API Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction."

Revised Rule	Old Rule
Sec. 112.2 Definitions. . . . . . . **<u>Spill Prevention, Control, and Countermeasure Plan; SPCC Plan, or Plan</u> means the document required by §112.3 that details the equipment, workforce, procedures, and steps to prevent, control, and provide adequate countermeasures to a discharge.**	Sec. 112.2 Definitions. . . . . . . [No direct counterpart in old rule.]

Notes

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

  Examples of an "equivalent prevention plan" might include an Integrated Contingency Plan (ICP), a State plan, a Best Management Practice Plan (which is a component of the Stormwater Pollution Prevention Plan), or other plan that meets all the requirements of part 112 and is supplemented by a cross-reference section identifying the location of elements in part 112 to the equivalent requirement in the other plan. We support the use of the ICP format and encourage owners or operators to use it.

  An equivalent Plan might be a Plan following the SPCC sequence in effect before this final rule became effective. An owner or operator may choose to use the sequence of the old rule, but must cross-reference the requirements in the revised rule to the sequence used in their Plan. We provide a table in section IV.A of the revised rule's preamble to help the owner or operator cross-reference the requirements more easily. If the only change an owner or operator makes is the addition of cross-referencing, he need not have a Professional Engineer certify that change.

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

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

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

Still another example of an equivalent plan might be a Best Management Practice Plan (BMP) plan prepared under an NPDES permit, if the plan provides protections equivalent to SPCC Plans.

Not all BMP plans will qualify, as some BMP plans might not provide equivalent protection. NPDES permits without BMP plans would not qualify. BMP plans are additional conditions which may supplement effluent limitations in NPDES permits. Under section 402(a)(1) of the CWA, BMP plans may be imposed when the Administrator determines that such conditions are necessary to carry out the provisions of the Act. See 40 CFR 122.44(k). CWA section 304(e) authorizes EPA to promulgate BMP plans as effluent limitations guidelines. NPDES rules provide for BMP plans when: authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances; numeric limitations are infeasible; or, the practices are reasonably necessary to achieve effluent limitations and standards to carry out the purposes of the CWA.

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

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

Revised Rule	Old Rule
Sec. 112.2 Definitions. . . . . . . **<u>Storage capacity</u> of a container means the shell capacity of the container.**	Sec. 112.2 Definitions. . . . . . . [No direct counterpart in old rule.]

Notes

- <u>Rationale for definition</u>: The definition of "storage capacity" includes the total capacity of a container capable of storing oil or oil mixtures. Because the percentage of oil in a mixture is determined by the owner or operator and can be changed at will, the total capacity of a container is considered in determining applicability under this part, regardless of whether the container is filled with oil or a mixture of oil and another substance, as long as a discharge from such container could violate the harmful quantity standards in 40 CFR part 110.

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

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

- <u>Exclusions – small containers; waste treatment facilities; small containers</u>: The definition of "storage capacity" applies to both large and small storage and use capacity. However, we note that in the applicability section of the rule, we exclude containers of less than 55 gallons from the scope of the SPCC rule. See §112.1(d)(5). A container above that size that is available for use or storage containing even small volumes of oil must be counted in storage capacity.

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

- <u>Secondary containment containers</u>*:* Containers that are used for secondary containment and not storage or use, are not counted as storage capacity.

Revised Rule	Old Rule
Sec. 112.2 Definitions. . . . . . . Transportation-related and non-transportation-related, as applied to an onshore or offshore facility, are defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency, dated November 24, 1971, *(Appendix A of this part).* United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the *U.S.* Virgin Islands, and the Pacific *Island Governments*. Vegetable oil means a non-petroleum oil or fat of vegetable origin, including but not limited to oils and fats derived from plant seeds, nuts, fruits, and kernels. Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel. **Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include playa lakes, swamps, marshes, bogs, and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds.** Worst case discharge for an onshore non-transportation-related facility means the largest foreseeable discharge in adverse weather conditions as determined using the worksheets in Appendix D to this part.	Sec. 112.2 Definitions. . . . . . . Transportation-related and non-transportation-related as applied to an onshore or offshore facility, are defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency, dated November 24, 1971, 36 FR 24080. United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands. Vegetable oil means a non-petroleum oil or fat of vegetable origin, including but not limited to oils and fats derived from plant seeds, nuts, fruits, and kernels. Vessel means every description of watercraft or other artificial contrivance used, or capable of being used as a means of transportation on water, other than a public vessel. Worst case discharge for an onshore non-transportation-related facility means the largest foreseeable discharge in adverse weather conditions as determined using the worksheets in Appendix D to this part.

Notes

Rationale for definition: The term "wetlands" appears in the definition of "navigable waters."

The definition of wetlands conforms to the definition in 40 CFR part 110 relating to the discharge of oil.

- Examples of wetlands: The examples listed in the definition are intended to help the reader with guidelines to identify wetlands. While the examples generally represent types of wetlands, they are not intended to be a categorical listing of such wetlands. Certain examples under some circumstances do not constitute wetlands. The 1987 Wetlands Manual is a useful source material for wetlands guidance. It would be impossible to specify every type of situation where wetlands occur.

SPCC RULE TEXT COMPARISON

SECTION 112.3

Revised Rule	Old Rule
Sec. 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan. . . . . . . *The owner or operator of an onshore or offshore facility subject to this section must prepare a Spill Prevention, Control, and Countermeasure Plan (hereafter "SPCC Plan" or "Plan)," in writing, and in accordance with §112.7, and any other applicable section of this part.*	Sec. 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan. . . . . . . [No direct counterpart in old rule.]

Notes

- Editorial change: We added an introduction to §112.3 as an editorial device to simplify the language in the paragraphs of this section.

Revised Rule	Old Rule
Sec. 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan. . . . . . . (a) **If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, on or before February 17, 2003, and must implement the amended Plan as soon as possible, but not later than August 18, 2003. If your onshore or offshore facility becomes operational after August 16, 2002 through August 18, 2003, and could reasonably be expected to have a discharge as described in §112.1(b), you must prepare a Plan on or before August 18, 2003 and fully implement it as soon as possible, but not later than August 18, 2003.** (b) *If you are the owner or operator* of an onshore or offshore facility that becomes operational after *August 18, 2003,* and could reasonably be expected to *have a discharge as described in §112.1(b), you must prepare and implement a Plan before you begin operations.*	Sec. 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan. . . . . . . (a) Owners or operators of onshore and offshore facilities in operation on or before the effective date of this part that have discharged or, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in 40 CFR part 110, into or upon the navigable waters of the United States or adjoining shorelines, shall prepare a Spill Prevention Control and Countermeasure Plan (hereinafter "SPCC Plan"), in writing and in accordance with Sec. 112.7. Except as provided for in paragraph (f) of this section, such SPCC Plan shall be prepared within six months after the effective date of this part and shall be fully implemented as soon as possible, but not later than one year after the effective date of this part. (b) Owners or operators of onshore and offshore facilities that become operational after the effective date of this part, and that have discharged or could reasonably be expected to discharge oil in harmful quantities, as defined in 40 CFR part 110, into or upon the navigable waters of the United States or adjoining shorelines, shall prepare an SPCC Plan in accordance with Sec. 112.7. Except as provided for in paragraph (f) of this section, such SPCC Plan shall be prepared within six months after the date such facility begins operations and shall be fully implemented as soon as possible, but not later than one year after such facility begins operations. . . . . . .

Notes

- Time period to prepare and implement a Plan – facilities currently in operation: For a facility in operation on the effective date of this rule (August 16, 2002), an owner or operator will have until August 18, 2003 to prepare and implement a new Plan. The owner or operator of a facility in

operation on the effective date of this rule will have until February 17, 2003 (6 months from the rule's effective date) to amend his Plan and must fully implement any amendment as soon as possible, but no later than August 18, 2003. The owner or operator of a facility that has had a discharge as described in §112.1(b), or reasonably could be expected to have one, already has an obligation to prepare and implement a Plan.

For example, an owner or operator whose facility became operational four years before the effective date of this rule is the owner or operator of a facility currently in operation on the effective date of this rule. He is therefore subject to current §112.3(b), and should have prepared his Plan no later than three and one half years before the effective date of this rule, and fully implemented it no later than three years before the effective date of this rule. Assuming that he still has not prepared a Plan on the effective date of the rule, he must prepare and fully implement a Plan immediately that meets the requirements of the revised rule. He is subject to penalties for violation of current §112.3(b) until he does so, and the penalties would accrue from the time the original deadlines passed before the effective date of this rule. The owner or operator of a facility which became operational four years before the effective date of the rule, and who prepared and fully implemented his Plan in compliance with current §112.3(b), must amend his Plan by February 17, 2003 to meet the requirements of the revised rule, and fully implement the amended Plan as soon as possible, but no later than August 18, 2003.

An owner or operator whose facility became operational 7 months before the effective date of the rule is an owner or operator of a facility currently in operation and is therefore subject to current §112.3(b). He should have prepared his Plan one month before the effective date of this rule. If he did, he will have until February 17, 2003 to amend that Plan to meet the requirements of the revised rule, and must fully implement the amended Plan as soon as possible, but no later than August 18, 2003. If he has not prepared a Plan by the effective date of the current rule as required, then he must prepare and fully

implement a Plan immediately that meets the requirements of the revised rule. He is subject to penalties for violation of current §112.3(b) until he does so.

An owner or operator whose facility became operational 4 months before the effective date of this rule is also an owner or operator of a facility currently in operation on the effective date of this rule and therefore subject to the current rule. However, in this case, the deadline to prepare a Plan under the current §112.3(b) has not yet passed. Therefore, the owner or operator is subject to the Plan preparation and implementation deadlines in §112.3(a) of the revised rule. He now has until February 17, 2003 to prepare a Plan, and he must fully implement the Plan (or amended Plan) as soon as possible after the Plan preparation deadline of this rule, but no later than August 18, 2003.

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

- Time period to prepare and implement a Plan – facilities becoming operational within one year after the effective date of the rule (13 months following publication in the Federal Register): If an owner or operator begins operations after August 16, 2002 through August 18, 2003, he will have until August 18, 2003 to prepare and implement a Plan. The rationale for the time frame in the rule is that the owner or operator will have had notice of the Plan preparation and implementation requirements from the publication date of the rule, a period of 13 months. In addition, the owner or operator would already have had notice of the general requirement for preparation of an SPCC Plan from the current part 112 regulations. Therefore, the owner or operator of a facility planning to become operational within one year after the effective date of this rule should start working on his Plan in time to have it fully implemented

within the year.

- Time period to prepare and implement a Plan – new facilities: Experience with the implementation of this regulation shows that many types of failures occur during or shortly following startup and that virtually all prevention, containment, and countermeasure practices are part of the facility design or construction. Therefore, it can be beneficial to the environment and carries out the intent of the statute if a facility Plan is prepared and implemented before startup. However, to provide sufficient notice to new facilities that a Plan must be prepared and implemented before beginning operations, we have delayed implementation of this section until August 18, 2003. If the owner or operator begins operations within one year of the effective date of this rule, the owner or operator must comply with the requirements in §112.3(a). However, if the owner or operator begins operations more than one year after the effective date of this rule, the facility would be "new" and the owner or operator would have to prepare and implement an SPCC Plan before he begins operations. If the owner or operator needs an extension to comply, he may seek one under §112.3(f). A year phase-in period from the effective date of the rule is in line with legitimate business and investment expectations. It allows a reasonable period of time for facilities to undertake necessary constructions, purchases of equipment, or to effect changes of procedures. And again, the general requirement for preparation of a Plan already exists in part 112, so new facilities should already have been aware of the need for a Plan.

- Extensions: We understand that some facilities may need extensions of time to comply. Extensions may be necessary to secure necessary manpower or equipment, or to construct necessary structures. If an extension is necessary, the owner or operator may seek one under §112.3(f). If no Plan amendments are necessary after the owner or operator reviews the rule, he must maintain the current Plan and cross-reference its elements to the redesignated requirements.

- Acquired facilities: For SPCC purposes, we

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

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

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

Revised Rule	Old Rule
Sec. 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan. . . . . . . (c) *If you are the owner or operator* of an onshore or offshore mobile facility, such as an onshore drilling or workover rig, barge mounted offshore drilling or workover rig, *or* portable fueling facility, *you must prepare, implement, and maintain a facility Plan* as required by *this section. This provision does not require that you prepare a new Plan each time you move the facility to a new site.* The *Plan* may be a general plan. *When you move* the mobile or portable facility, *you must locate and install it using the discharge* prevention practices outlined in the Plan for the facility. *You may not operate* a mobile or portable facility *subject to this part unless you have implemented the Plan. The Plan is applicable* only while the facility is in a fixed (non-transportation) operating mode.	Sec. 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan. . . . . . . (c) Owners or operators of onshore and offshore mobile or portable facilities, such as onshore drilling or workover rigs, barge mounted offshore drilling or workover rigs, and portable fueling facilities shall prepare and implement an SPCC Plan as required by paragraphs (a), (b) and (d) of this section. The owners or operators of such facility need not prepare a new SPCC Plan each time the facility is moved to a new site. The SPCC Plan may be a general plan, prepared in accordance with Sec. 112.7, using good engineering practice. When the mobile or portable facility is moved, it must be located and installed using the spill prevention practices outlined in the SPCC Plan for the facility. No mobile or portable facility subject to this regulation shall operate unless the SPCC Plan has been implemented. The SPCC Plan shall only apply while the facility is in a fixed (non-transportation) operating mode. . . . . . .

Notes

- Background: Physical surroundings of mobile facilities are subject to change. However, changing physical surroundings should not exempt mobile facilities from the rule. Mobile facilities may have "general" Plans and need not prepare a new Plan each time the facility is moved to a new site. When a mobile facility is moved, it must be located and installed using the spill prevention practices outlined in the Plan for the facility.

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

- Multi-well drilling programs: It is not necessary to amend the Plan every time an owner or operator drills a well in a field containing multiple wells. A general Plan will suffice.

Revised Rule	Old Rule
Sec. 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan. . . . . . . *(d) A licensed Professional Engineer must review and certify a Plan for it to be effective to satisfy the requirements of this part.* *(1)* By means of this certification the *Professional Engineer attests:* **(i) That he is familiar with the requirements of this part;** **(ii) That he or his agent has visited and examined the facility;** **(iii)** That the Plan has been prepared in accordance with good engineering practice, *including consideration of applicable industry standards, and with the requirements of this part;* **(iv) That procedures for required inspections and testing have been established;** **and** **(v) That the Plan is adequate for the facility.** *(2)* Such certification shall in no way relieve the owner or operator of a facility of his duty to prepare and fully implement such Plan in accordance with the requirements *of this part.*	Sec. 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan. . . . . . . (d) No SPCC Plan shall be effective to satisfy the requirements of this part unless it has been reviewed by a Registered Professional Engineer and certified to by such Professional Engineer. By means of this certification the engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the SPCC Plan has been prepared in accordance with good engineering practices. Such certification shall in no way relieve the owner or operator of an onshore or offshore facility of his duty to prepare and fully implement such Plan in accordance with Sec. 112.7, as required by paragraphs (a), (b) and (c) of this section. . . . . . .

Notes

- Certification requirement: PE certification of all facilities, both large and small – a discharge as described in §112.1(b) from any size facility may be harmful, and PE review and certification of a Plan may help prevent that discharge. Nevertheless, we note that under the revised rule many small facilities will not be regulated by the SPCC program at all. See §112.1(d)(2).

  A PE's certification of a Plan means that the PE is certifying that the facility's equipment, design, construction, and maintenance procedures used to implement the Plan are in accordance with good

engineering practices. Good engineering practices are likely to prevent discharges. PE certification, to be effective for SPCC purposes, must be completed in accordance with the law of the State in which the PE is working. For example, some States require a PE to apply his seal to effectuate a certification. Others do not.

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

  We require either the PE or the PE's agent to visit and examine the facility before the PE certifies the Plan. An agent might include an engineering technician, technologist, graduate engineer, or other qualified person to prepare preliminary reports, studies, and evaluations after visiting the site. The PE, after reviewing the agent's work, could then legitimately certify the Plan. Nevertheless, in all cases the PE must ensure that his certification represents an exercise of good engineering judgment. If that requires a personal site visit, the PE must visit the facility himself before certifying the Plan.

- Good engineering practice: Good engineering practice "will require that appropriate provisions of applicable codes, standards, and regulations be incorporated into the SPCC Plan for a particular facility" (56 FR 54617-18). The revised rule

specifically includes consideration of applicable industry standards as an element of the PE's attestation that the Plan has been prepared in accordance with good engineering practice. Consideration of applicable industry standards is an essential element of good engineering practice. Industry standards include industry regulations, standards, codes, specifications, recommendations, recommended practices, publications, bulletins, and other materials. See §112.7(a)(1) and (j). The owner or operator must specifically document any industry standard used in a Plan to comply with this section. The documentation should include the name of the industry standard, and the year or edition of that standard. However, we have chosen not to incorporate specific industry standards into the rule.

- Testing: Procedures for inspections and tests must have been established, not necessarily completed, when the PE is present. The PE is not normally present at time of completion. It is also not necessary that the PE oversee all testing, because the PE only shares responsibility with the owner or operator for establishing procedures, not for their implementation (which is the sole responsibility of the owner or operator). However, the PE may include in the Plan a schedule for testing, with specific time frames for the completion of that testing.

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

- Time limit for PE certification: There is not a time limit on PE certification, because the rule ensures that the PE reviews the Plan at appropriate times. Thus, current PE certifications remain valid. But new certifications after the effective date of this rule must include the required attestations. An owner or operator must review his Plan at least every five years (under the revised rule), and amend it if new technology is warranted. Also, an owner or operator must amend his Plan to conform with any applicable rule requirements,

or at any time he makes any change in facility design, construction, operation, or maintenance that materially affects its potential for a discharge as described in §112.1(b). All material amendments require PE certification. Because a Plan will likely require one or more amendments requiring PE review and certification, a time limit on PE certifications is unnecessary. See §112.5(c).

- Other PE issues: The PE need not be independent of the facility. Nor is there a requirement that he not have a financial interest in it. We believe the professional integrity of a PE and the professional oversight of boards licensing PEs are sufficient to prevent any abuses. In addition, it is not necessary that the PE be licensed in the same State as the facility, because the SPCC program is national in scope and therefore State expertise is unnecessary. While States may prescribe more stringent requirements than EPA, a PE may familiarize himself with any particular requirements a State may impose and address them in the Plan. See §112.7(j). Furthermore, violations of PE ethics may be handled by the licensing board of the PE's state no matter where the work is done.

Revised Rule	Old Rule
Sec. 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan. . . . . . . (e) *If you are the owner or operator of a facility for which a Plan is required under this section, you must*: *(1)* Maintain a complete copy of the Plan at *the* facility if the facility is normally attended at least **four** hours per day, or at the nearest field office if the facility is not so attended, *and* *(2)* *Have* the Plan available to the Regional Administrator for on-site review during normal working hours.	Sec. 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan. . . . . . . (e) Owners or operators of a facility for which an SPCC Plan is required pursuant to paragraph (a), (b) or (c) of this section shall maintain a complete copy of the Plan at such facility if the facility is normally attended at least 8 hours per day, or at the nearest field office if the facility is not so attended, and shall make such Plan available to the Regional Administrator for on-site review during normal working hours. . . . . . .

Notes

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

- Plan availability: The Plan must be available at the facility if it is normally attended at least four hours per day, or at the nearest field office if it is not so attended. A Plan must always be available without advance notice, because an inspection might not be scheduled. The owner or operator is not required to locate a Plan at an unattended facility because of the difficulty that might ensue when emergency personnel try to find the Plan. However, the owner or operator may keep a Plan at an unattended facility. If the owner or operator does not locate the Plan at the facility, they must locate it at the nearest field office.

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

Revised Rule	Old Rule
Sec. 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan. . . . . . . (f) *Extension* of time. (1) The Regional Administrator may authorize an extension of time for the preparation and full implementation of *a Plan, or any amendment thereto,* beyond the time permitted for the preparation, implementation, or amendment of *a Plan under this part, when* he finds that the owner or operator of a facility subject to *this section*, cannot fully comply with the requirements as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond the control and without the fault of such owner or operator or *his agents* or employees. (2) *If you are an* owner or operator seeking an extension of time under paragraph (f)(1) of this section, *you* may submit a *written extension request* to the Regional Administrator. Your *request must include*: *(i)* A full explanation of the cause for any such delay and the specific aspects of *the Plan* affected by the delay; (ii) A full discussion of actions being taken or contemplated to minimize or mitigate such delay; *and* (iii) A proposed time schedule for the implementation of any corrective actions being taken or contemplated, including interim dates for completion of tests or studies, installation and operation of any necessary equipment, or other preventive measures. In addition you may present additional oral or written statements in support of *your extension request*. (3) The submission of a *written extension request* under paragraph (f)(2) of this section *does not relieve you of your obligation* to comply with the requirements *of this part. The Regional Administrator may request a copy of your Plan to evaluate the extension request. When the Regional Administrator authorizes an*	Sec. 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan. . . . . . . (f) Extensions of time. (1) The Regional Administrator may authorize an extension of time for the preparation and full implementation of an SPCC Plan beyond the time permitted for the preparation and implementation of an SPCC Plan pursuant to paragraph (a), (b) or (c) of this section where he finds that the owner or operator of a facility subject to paragraphs (a), (b) or (c) of this section cannot fully comply with the requirements of this part as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond the control and without the fault of such owner or operator or their respective agents or employees. (2) Any owner or operator seeking an extension of time pursuant to paragraph (f)(1) of this section may submit a letter of request to the Regional Administrator. Such letter shall include: (i) A complete copy of the SPCC Plan, if completed; (ii) A full explanation of the cause for any such delay and the specific aspects of the SPCC Plan affected by the delay; (iii) A full discussion of actions being taken or contemplated to minimize or mitigate such delay; (iv) A proposed time schedule for the implementation of any corrective actions being taken or contemplated, including interim dates for completion of tests or studies, installation and operation of any necessary equipment or other preventive measures. In addition, such owner or operator may present additional oral or written statements in support of this letter of request. (3) The submission of a letter of request for extension of time pursuant to paragraph (f)(2) of

extension of time for particular equipment or other specific aspects of the *Plan*, such extension *does not affect your* obligation to comply with the *requirements related* to other equipment or other specific aspects of the *Plan* for which *the Regional Administrator has not expressly authorized an extension.*	this section shall in no way relieve the owner or operator from his obligation to comply with the requirements of Sec. 112.3 (a), (b) or (c). Where an extension of time is authorized by the Regional Administrator for particular equipment or other specific aspects of the SPCC Plan, such extension shall in no way affect the owner's or operator's obligation to comply with the requirements of Sec. 112.3 (a), (b) or (c) with respect to other equipment or other specific aspects of the SPCC Plan for which an extension of time has not been expressly authorized.

Notes

- Existing Plan requirements: We have broadened the scope of extension requests to any facility that can justify the request, because for every type of facility there may be cases in which an extension can be justified. Existing fixed and mobile facilities may experience delays in construction or equipment delivery or may lack qualified personnel, and these circumstances may be beyond the control of, and without the fault of, the owner or operator. We also believe that the submission of the entire Plan as a matter of course is unnecessary to evaluate each extension request. Therefore, we have amended the rule to provide that the Regional Administrator may request the facility Plan if he deems it appropriate. But we do not believe that he will always do so. It may be necessary under some circumstances. The Regional Administrator also retains discretion to request the Plan after on-site review, or after certain discharges. *See* §112.4(a)(9) and (d).

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

SPCC RULE TEXT COMPARISON

SECTION 112.4

Revised Rule	Old Rule
Sec.112.4 Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator. *If you are the owner or operator of a facility subject to this part, you must:* (a) Notwithstanding compliance with §112.3, whenever *your facility has discharged* more than 1,000 U.S. gallons of oil *in a single discharge as described in §112.1(b), or discharged more than* **42** *U.S. gallons of oil in each of two discharges as described in §112.1(b),* occurring within any twelve month period, *submit the following* information to the Regional Administrator within 60 days from the time the facility becomes subject to this section: (1) Name of the facility; (2) *Your name*; (3) Location of the facility; (4) Maximum storage or handling capacity of the facility and normal daily throughput; *(5)* Corrective action and countermeasures you have taken, including a description of equipment repairs *and* replacements; (6) An *adequate* description of the facility, including maps, flow diagrams, and topographical maps, *as necessary;* (7) The cause of such *discharge as described in §112.1(b),* including a failure analysis of the system or subsystem in which the failure occurred; (8) Additional preventive measures you have taken or contemplated to minimize the possibility of recurrence; and (9) Such other information as the Regional Administrator may reasonably require pertinent to the Plan or *discharge*.	Sec.112.4 Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator. (a) Notwithstanding compliance with Sec. 112.3, whenever a facility subject to Sec. 112.3 (a), (b) or (c) has: Discharged more than 1,000 U.S. gallons of oil into or upon the navigable waters of the United States or adjoining shorelines in a single spill event, or discharged oil in harmful quantities, as defined in 40 CFR part 110, into or upon the navigable waters of the United States or adjoining shorelines in two spill events, reportable under section 311(b)(5) of the FWPCA, occurring within any twelve month period, the owner or operator of such facility shall submit to the Regional Administrator, within 60 days from the time such facility becomes subject to this section, the following: (1) Name of the facility; (2) Name(s) of the owner or operator of the facility; (3) Location of the facility; (4) Date and year of initial facility operation; (5) Maximum storage or handling capacity of the facility and normal daily throughput; (6) Description of the facility, including maps, flow diagrams, and topographical maps; (7) A complete copy of the SPCC Plan with any amendments; (8) The cause(s) of such spill, including a failure analysis of system or subsystem in which the failure occurred; (9) The corrective actions and/or countermeasures taken, including an adequate description of equipment repairs and/or replacements; (10) Additional preventive measures taken or contemplated to minimize the possibility of recurrence; (11) Such other information as the Regional Administrator may reasonably require pertinent to the Plan or spill event. . . . .

Notes

- Background: We revised the geographic scope of the rule in accordance with the CWA amendments, by using the phase "discharge as described in §112.1(b)." We also reduced the amount of information that must minimally be submitted to the RA.

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

- Discharge threshold – 42 gallons: We raised the threshold for reporting two discharges as described in §112.1(b), from a "reportable" quantity under the Clean Water Act, to a threshold of more than 42 U.S. gallons, or 1 barrel, in each of those discharges. The 1,000 gallon threshold for a single discharge as described in §112.1(b) remains unchanged.

  A higher threshold of reporting discharges is justifiable because we believe that only larger discharges should trigger an EPA obligation to review a facility's prevention efforts. A higher threshold should also trigger a facility's obligation to submit information and possibly have to take further prevention measures. Therefore, we have changed the threshold for reporting after two discharges as described in §112.1(b). Under the revised rule, an owner or

operator of a facility subject to this part must only submit the required information when in any 12-month period there have been two discharges as described in §112.1(b), in each of which more than 42 U.S. gallons, or one barrel, has been discharged. We believe that a 42 gallon threshold is the appropriate one to trigger a facility's information and possibly to have to take further prevention measures. When multiple discharges occur at a facility subject to the SPCC program, such as a generating station, they often involve the discharge of very small amounts of oil, and these discharges tend to come randomly from a lube pipe, an oil level sight glass crack, or some other apparatus, and do not normally indicate a recurring problem with the container. Having two or more of these small discharges does not indicate that the facility's SPCC Plan requires revision. The other reporting threshold of 1,000 gallons in any a single discharge as described in §112.1(b) remains the same.

Even if a sheen caused by a discharge as described in §112.1(b) over the threshold amount disappears within 24 hours, a discharge report is still necessary. The discharge itself may indicate a serious problem at the facility that needs to be corrected. The discharge report may give us the information necessary to require specific correction measures.

- "Sheen" rule: The duty imposed by the CWA to report to the National Response Center all discharges that may be harmful, further described by 40 CFR 110.3, is unchanged. Those discharges include discharges that violate applicable water quality standards; or, cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.
- Maps, flow diagrams, and charts: We modified the provision regarding maps, flow diagrams, topographical maps to clarify that only the information necessary to adequately describe the facility and discharge is required – not necessarily all of the information listed in the paragraph. "As necessary" means as determined by the owner or operator, subject to the obligations of this rule, unless the RA requests more information. There might be circumstances in

which the owner or operator would submit only a brief description of the facility or a map, for example, because flow diagrams and topographical maps were unnecessary to describe the discharge, and would not help the RA to determine whether any amendment to the Plan was necessary to prevent future discharges as described in §112.1(b).

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

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

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

Revised Rule	Old Rule
Sec.112.4 Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator. . . . . . . (b) *Take no action under this section until it applies to your facility. This section does not* apply until the expiration of the time permitted for the *initial* preparation and implementation of the *Plan under §112.3, but not including any amendments to the Plan.*	Sec.112.4 Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator. . . . . . . (b) Section 112.4 shall not apply until the expiration of the time permitted for the preparation and implementation of an SPCC Plan pursuant to Sec. 112.3 (a), (b), (c) and (f). . . . . .

Notes

- Time line: We revised §112.3 to extend the time lines for certain facilities to prepare and implement Plans. Accordingly, we are maintaining the approach under the old §112.4(b) to provide that the §112.4 spill reporting requirements will not apply until the expiration of the time permitted for the initial preparation and implementation of a Plan under §112.3(a), (b), (c), and (f).

  We also revised §112.3(a) to provide an extended time line for preparing a Plan amendment and §112.3(f) to provide for an extension request for an amendment to a Plan. Therefore, we have also revised §112.4(b) to provide that the obligation to submit information as required by §112.4(a) does not arise until the expiration of the time permitted for the initial preparation and implementation of the Plan under §112.3, but not for any amendments to the Plan. An amendment may or may not be directly related to the cause of the discharge as described in §112.1(b), and therefore may have little relevance to the duty to submit discharge reports to EPA.

Revised Rule	Old Rule
Sec.112.4 Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator. . . . . . . (c) *Send to the appropriate agency or agencies in charge of oil pollution control activities in the State in which the facility is located* a complete copy of all information *you* provided to the Regional Administrator *under* paragraph (a) of this *section. Upon* receipt of the information such State agency *or agencies* may conduct a review and make recommendations to the Regional Administrator as to further procedures, methods, equipment, and other *requirements necessary* to prevent and to contain *discharges* from your facility.	Sec.112.4 Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator. . . . . . . (c) A complete copy of all information provided to the Regional Administrator pursuant to paragraph (a) of this section shall be sent at the same time to the State agency in charge of water pollution control activities in and for the State in which the facility is located. Upon receipt of such information such State agency may conduct a review and make recommendations to the Regional Administrator as to further procedures, methods, equipment and other requirements for equipment necessary to prevent and to contain discharges of oil from such facility. . . . . . .

Notes

- Legal authority: Section 311(j)(1) of the CWA authorizes the Federal government (and EPA through delegation) to establish "procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil...." Section 112.4(c) of this rule is a procedure to help prevent discharges that fall within the scope of that statutory provision. It enables States to learn of discharges reported to EPA and to make recommendations as to further procedures, methods, equipment, and other requirements that might prevent such discharges at the reporting facility. The SPCC program is a Federal program and we believe that in working with the States, we can improve the Federal program through coordination with State oil pollution prevention programs.

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

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

Revised Rule	Old Rule
Sec.112.4 Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator. . . . . . . (d) *Amend your Plan, if after review by the Regional Administrator of the information you submit under paragraph (a) of this section, or submission of information to EPA by the State agency under paragraph (c) of this section, or after on-site review of your Plan, the Regional Administrator requires that you do so.* The Regional Administrator may require *you to amend your Plan if* he finds that *it* does not meet the requirements of this part or that amendment is necessary to prevent and contain *discharges* from *your* facility.	Sec.112.4 Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator. . . . . . . (d) After review of the SPCC Plan for a facility subject to paragraph (a) of this section, together with all other information submitted by the owner or operator of such facility, and by the State agency under paragraph (c) of this section, the Regional Administrator may require the owner or operator of such facility to amend the SPCC Plan if he finds that the Plan does not meet the requirements of this part or that the amendment of the Plan is necessary to prevent and to contain discharges of oil from such facility. . . . . . .

Notes

- Regional Administrator approval of Plans: We decided not to create a new class of SPCC Plans that require EPA approval – either Plans submitted following certain discharges as required by §112.4(a) or Plans with contingency plans – because we do not believe such approval is necessary in order to ensure effective Plans.

- Plan information and amendments: While the RA will not have authority under this section to approve Plans, he has authority to require Plan amendment. We will strive to be as timely as possible in reviewing the information when submitted, and making decisions on any required amendments. A time limit on the RA's decision making authority is unnecessary because a facility may continue to operate under its existing Plan while the RA's decision is pending. While we will consider cost in our decision making, amendments may be required on a case-specific basis to help prevent discharges. Any technical amendment required would require PE certification. See §112.5(c) .

Revised Rule	Old Rule
Sec.112.4 Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator. . . . . . . (e) *Act in accordance with this paragraph when the Regional Administrator proposes by certified mail or by personal delivery that you amend your SPCC Plan.* If *the owner* or operator is a corporation, *he must also notify by mail the registered agent* of such corporation, *if any and if known,* in the State *in which the* facility is located. *The Regional Administrator must specify the terms of such proposed amendment.* Within 30 days from receipt of such notice, *you* may submit written information, views, and arguments on the *proposed* amendment. After considering all relevant material presented, the Regional Administrator must either notify *you* of any amendment required or rescind the notice. *You must amend your Plan as required within 30 days after such notice,* unless the Regional Administrator, for good cause, specifies another effective date. *You* must implement the amended Plan as soon as possible, but not later than six months *after you amend your Plan,* unless the Regional Administrator specifies another date. (f) *If you* appeal a decision made by the Regional Administrator requiring an amendment to an SPCC Plan, *send the appeal to the EPA Administrator in writing* within 30 days of receipt of the notice from the Regional Administrator requiring the amendment *under paragraph (e) of this section. You must send* a complete copy of the *appeal to* the Regional Administrator at the time *you make* the appeal. The appeal *must* contain a clear and concise statement of the issues and points of fact in the case. It may also contain additional information from *you,* or from any other person. The *EPA Administrator* may request additional information from *you,* or from any other person. The *EPA Administrator* must render a decision	Sec.112.4 Amendment of Spill Prevention, Control, and Countermeasure Plan by Regional Administrator. . . . . . . (e) When the Regional Administrator proposes to require an amendment to the SPCC Plan, he shall notify the facility operator by certified mail addressed to, or by personal delivery to, the facility owner or operator, that he proposes to require an amendment to the Plan, and shall specify the terms of such amendment. If the facility owner or operator is a corporation, a copy of such notice shall also be mailed to the registered agent, if any, of such corporation in the State where such facility is located. Within 30 days from receipt of such notice, the facility owner or operator may submit written information, views, and arguments on the amendment. After considering all relevant material presented, the Regional Administrator shall notify the facility owner or operator of any amendment required or shall rescind the notice. The amendment required by the Regional Administrator shall become part of the Plan 30 days after such notice, unless the Regional Administrator, for good cause, shall specify another effective date. The owner or operator of the facility shall implement the amendment of the Plan as soon as possible, but not later than six months after the amendment becomes part of the Plan, unless the Regional Administrator specifies another date. (f) An owner or operator may appeal a decision made by the Regional Administrator requiring an amendment to an SPCC Plan. The appeal shall be made to the Administrator of the United States Environmental Protection Agency and must be made in writing within 30 days of receipt of the notice from the Regional Administrator requiring the amendment. A complete copy of the appeal must be sent to the Regional Administrator at the time the appeal is made. The appeal shall contain a clear and concise statement of the issues and points of fact

within 60 days of receiving the appeal and *must notify you* of his decision.	in the case. It may also contain additional information from the owner or operator, or from any other person. The Administrator or his designee may request additional information from the owner or operator, or from any other person. The Administrator or his designee shall render a decision within 60 days of receiving the appeal and shall notify the owner or operator of his decision.

Notes

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

SPCC RULE TEXT COMPARISON

SECTION 112.5

Revised Rule	Old Rule
Sec.112.5 Amendment of Spill Prevention, Control, and Countermeasure Plan by owners or operators. *If you are the owner or operator of a facility subject to this part, you must:* (a) Amend the SPCC Plan for *your* facility in accordance with the *general requirements in* §112.7, *and with any specific section of this part applicable to your facility, when* there is a change in *the* facility design, construction, operation, or maintenance *that* materially affects *its* potential for *a discharge as described in §112.1(b). Examples of changes that may require amendment of the Plan include, but are not limited to: commissioning or decommissioning containers; replacement, reconstruction, or movement of containers; reconstruction, replacement, or installation of piping systems; construction or demolition that might alter secondary containment structures; changes of product or service; or revision of standard operation or maintenance procedures at a facility. An amendment made under this section must be prepared within six months, and implemented* as soon as possible, but not later than six months *following preparation of the amendment.*	Sec.112.5 Amendment of Spill Prevention, Control, and Countermeasure Plan by owners or operators (a) Owners or operators of facilities subject to Sec. 112.3 (a), (b) or (c) shall amend the SPCC Plan for such facility in accordance with Sec. 112.7 whenever there is a change in facility design, construction, operation or maintenance which materially affects the facility's potential for the discharge of oil into or upon the navigable waters of the United States or adjoining shore lines. Such amendments shall be fully implemented as soon as possible, but not later than six months after such change occurs. . . . . .

Notes

- <u>When amendment is necessary</u>: We have maintained the standard for amendments – i.e., when there is a change that materially affects the facility's potential to discharge oil. This position accords with our stance on when Plans should be prepared and implemented. See §112.3. An amendment is necessary when a facility change results in a decrease in the volume stored or a decrease in the potential for an oil spill because EPA needs this information to determine compliance with the rule. For example, the amount of secondary containment required depends on the storage capacity of a container. Decreases might also affect the way a facility

plans emergency response measures and training procedures. A lesser capacity might require different response measures than a larger capacity. The training of employees might be affected because the operation and maintenance of the facility might be affected by a lesser storage capacity.

Likewise, a standard requiring amendment "when there are indicia of problems" is too vague and leaves problems unaddressed, which may result in a discharge as described in §112.1(b). A standard requiring an amendment only when the change would cause the spill potential to exceed the Plan's capabilities (because day-to-day changes do not affect the worst case spill) would have the effect of leaving no documentation of amendments which might affect discharges which do not reach the standard of "worst case spill." While we encourage facilities to incorporate new procedures into Plans that would help to prevent discharges, amendments are still necessary when material changes are made, to document those new procedures and thus facilitate the enforcement of the rule's requirements. Amendments may be necessary at large or small facilities alike to prevent discharges after material changes.

- Material changes: A material change is one that may either increase or decrease the potential for a discharge. The examples of material changes are for illustration only – the items in the list may not always trigger amendments, and the list is not comprehensive. Only changes that materially affect operations trigger the amendment requirement. Ordinary maintenance or non-material changes which do not affect the potential for the discharge of oil do not.

  Even decommissioning a container could materially decrease the potential for a discharge and require Plan amendment, unless such decommissioning brings the facility below the regulatory threshold, making the preparation and implementation of a Plan no longer a requirement. We also believe that the oversight of a Professional Engineer is necessary to ensure that the container is in fact properly closed.

  Replacement of tanks, containers, or equipment

may not be a material change if the replacements are identical in quality, capacity, and number. However, a replacement of one tank with more than one identical tank resulting in greater storage capacity is a material change because the storage capacity of the facility and its consequent discharge potential have increased.

- Changes of product: The list of examples includes "changes of product." Such changes may materially affect facility operations and therefore be a material change. An example of a change of product that would be a material change would be a change from storage of asphalt to storage of gasoline. Storage of gasoline instead of asphalt presents an increased fire and explosion hazard. A switch from storage of gasoline to storage of asphalt might result in increased stress on the container leading to its failure. Changes of product involving different grades of gasoline might not be a material change and thus not require amendment of the Plan if the differing grades of gasoline do not substantially change the conditions of storage and potential for discharge.

- Changes in service: A change in service may be a material change if it affects the potential for a discharge. A "change in service" is a change from previous operating conditions involving different properties of the stored product such as specific gravity or corrosivity and/or different service conditions of temperature and/or pressure. Therefore, we have amended the rule to add "or service" after the phrase "changes of product."

- Documenting no change or certain activities: We agree that a log book may be used to document non-material, routine activities. However, this is not an appropriate substitute for amendment when a material change is made at a facility.

EPA approval: EPA approval of an amendment is not required. However, if the RA is not satisfied that your amendment satisfies the requirements of these rules, he may require further amendment of your Plan.

- Time line for amendment implementation: The rule does not require Plan amendment before material changes are made. The rule continues

to provide a maximum of six months for Plan amendment, and a maximum of six more months for amendment implementation. Section 112.3(f) allows the RA to authorize an extension of time to prepare and implement an amendment under certain circumstances.

Revised Rule	Old Rule
Sec.112.5 Amendment of Spill Prevention, Control, and Countermeasure Plan by owners or operators . . . . . . (b) Notwithstanding compliance with paragraph (a) of this *section, complete* a review and evaluation of the SPCC Plan at least once every **five** years from the date *your* facility becomes subject to this part; *or, if your facility was in operation on or before August 16, 2002, five years from the date your last review was required under this part.* As a result of this review and evaluation, *you* must amend *your* SPCC Plan within six months of the review to include more effective prevention and control technology if *the technology has been field-proven at the time of the review and will significantly reduce the likelihood of a discharge as described in §112.1(b) from the facility. You must implement any amendment as soon as possible, but not later than six months following preparation of any amendment.* **You must document your completion of the review and evaluation, and must sign a statement as to whether you will amend the Plan, either at the beginning or end of the Plan or in a log or an appendix to the Plan. The following words will suffice, "I have completed review and evaluation of the SPCC Plan for (name of facility) on (date), and will (will not) amend the Plan as a result."**	Sec.112.5 Amendment of Spill Prevention, Control, and Countermeasure Plan by owners or operators . . . . . . (b) Notwithstanding compliance with paragraph (a) of this section, owners and operators of facilities subject to Sec. 112.3 (a), (b) or (c) shall complete a review and evaluation of the SPCC Plan at least once every three years from the date such facility becomes subject to this part. As a result of this review and evaluation, the owner or operator shall amend the SPCC Plan within six months of the review to include more effective prevention and control technology if: (1) Such technology will significantly reduce the likelihood of a spill event from the facility, and (2) if such technology has been field-proven at the time of the review. . . . . . .

Notes

- Five-year review: The revised rule changes the frequency of Plan review from once every three years to once every five years. A five-year review period will make coordination of review of related plans, such as facility response plans required by part 112, easier. Amendment of a Plan will still be necessary when a material change is made affecting the facility's potential to discharge oil, perhaps after certain discharges as

required by the RA under §112.4(a), and perhaps after on-site review of a Plan (see §112.4(d)). Plus the Plan must be implemented at all times. These opportunities ensure that Plans will be current. Technology changes enough within a five-year period to warrant required review within such time period whether or not other changes occur. Amendments other than the five-year review amendments may not be based on the need to learn of improved technology. Those amendments might result from deficiencies in the Plan, on the need to make repairs, or to remedy the cause of a discharge.

- Calculation of time between reviews: The change in the rule from three-year to five-year reviews requires some explanation as to when a review must be conducted. For example, a facility became subject to the rule on January 1, 1990. The first three-year review should have been conducted by January 1, 1993, the second by January 1, 1996, the third by January 1, 1999, and the fourth by January 1, 2002. The next review must be conducted by January 1, 2007, due to the rule change. In other words, an existing facility must complete the review within 5 years of the date the last review must have been completed. A facility becoming operable on or after the effective date of the rule will begin a five-year cycle at the date it becomes subject to part 112.

- Completion of review: The benefit of documenting completion of review lies in the fact that it shows that someone reviewed the Plan to determine if better technology would benefit the facility and the Plan is current. Documentation of completion of review is necessary whether or not any amendments are necessary in order to clearly show that the review was done. Mere dating of the Plan or of an amendment does not show that an owner or operator performed the required review. Documentation of completion of review is a function of the owner or operator, whereas certification of any resulting technical amendment is a function of the PE. Such documentation does not need to be forwarded to the Regional Administrator. If the Regional Administrator wishes to verify completion of review, he may do so during an on-site inspection.

- How to document completion of review: A documentation of completion of review must be added either at the beginning or the end of the Plan, or in a log book appended to the Plan or other appendix to the Plan. Completion can be documented in one of two ways. First, if amendment of the Plan is necessary, then an owner or operator must state as much, and the review is complete. This statement is necessary because Plan amendments may result either from five-year review or from material changes at the facility affecting its potential for discharge, or from on-site review of the Plan. There is no way to know which circumstance causes the amendment without some explanation. Second, if no amendments are necessary, the owner or operator must document completion of review by merely signing a statement that he has completed the review and no amendments are necessary. The owner or operator may use the words suggested in the rule to document completion, or make any similar statement to the same effect.

- Who documents review: The owner or operator of the facility, or a person at a management level with sufficient authority to commit the necessary resources, must document completion of review.

- Time line for amendment implementation: Under the old rule, §112.5(b) required that Plan amendments be prepared within six months. It was silent as to time lines for implementation. Therefore, we revised the rule to clarify that amendments must be implemented as soon as possible, but within the next six months. This is the current standard for implementation of certain other amendments. See, for example, §§112.3(a) and 112.4(e). We note that §112.3(f) allows an owner or operator to request an extension of time to prepare and implement an amendment.

- Editorial changes and clarifications: We do not use the word "certification" in the requirement so that the rule avoids the legal effect a certification may have. The intent of the certification is to show that an owner or operator performed a review of the Plan every five years. A false documentation of completion of review of the Plan is a deficiency in the Plan and may be cited

as a violation.

Revised Rule	Old Rule
Sec.112.5 Amendment of Spill Prevention, Control, and Countermeasure Plan by owners or operators . . . . . . (c) *Have a Professional Engineer certify any technical amendment to your Plan in accordance with §112.3(d).*	Sec.112.5 Amendment of Spill Prevention, Control, and Countermeasure Plan by owners or operators . . . . . . (c) No amendment to an SPCC Plan shall be effective to satisfy the requirements of this section unless it has been certified by a Professional Engineer in accordance with Sec. 112.3(d).

Notes

- PE certification: It is the responsibility of the owner or operator to document completion of review, but completion of review and Plan amendment are two different processes. PE certification is not necessary unless the Plan is amended.

  We believe that PE certification is necessary for any technical amendment that requires the application of good engineering practice. We believe that good engineering practice is essential to help prevent discharges. Non-technical changes not requiring the exercise of good engineering practice do not require PE certification. Such non-technical changes include but are not limited to such items as: changes to the contact list; more stringent requirements for stormwater discharges to comply with NPDES rules; phone numbers; product changes if the new product is compatible with conditions in the existing tank and secondary containment; and, any other changes which do not materially affect the facility's potential to discharge oil. If the owner or operator is not sure whether the change is technical or non-technical, he should have it certified.

SPCC RULE TEXT COMPARISON

SECTION 112.7

Revised Rule	Old Rule
Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. *If you are the owner or operator of a facility subject to this part you must prepare a Plan* in accordance with good engineering practices. *The Plan must have the* full approval of management at a level of authority to commit the necessary resources *to fully implement the Plan. You must prepare the Plan in writing.* **If you do not follow the sequence specified in this section for the Plan, you must prepare an equivalent Plan acceptable to the Regional Administrator that meets all of the applicable requirements listed in this part, and you must supplement it with a section cross-referencing the location of requirements listed in this part and the equivalent requirements in the other prevention plan.** If the Plan calls for additional facilities or procedures, methods, or equipment not yet fully operational, *you must discuss these items* in separate paragraphs, and *must explain separately* the details of installation and operational start-up. *As detailed elsewhere in this section, you must also:* (a)(1) Include a discussion of your facility's conformance with *the requirements listed in this part*.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. The SPCC Plan shall be a carefully thought-out plan, prepared in accordance with good engineering practices, and which has the full approval of management at a level with authority to commit the necessary resources. If the plan calls for additional facilities or procedures, methods, or equipment not yet fully operational, these items should be discussed in separate paragraphs, and the details of installation and operational start-up should be explained separately. The complete SPCC Plan shall follow the sequence outlined below, and include a discussion of the facility's conformance with the appropriate guidelines listed: (a) A facility which has experienced one or more spill events within twelve months prior to the effective date of this part should include a written description of each such spill, corrective action taken and plans for preventing recurrence. . . . . .

Notes

- "Should to Shall to Must" Clarification: EPA has always considered that §112.3 of the SPCC rule requires that SPCC Plans be prepared in accordance with §112.7, which in turn requires that Plans be prepared in accordance with good engineering practice. However, clarification of the rule was necessary because of confusion on the part of some facility owners or operators who have interpreted the old rule's use of the words "should" and "guidelines" in §112.7 as an

indication that compliance with the applicable provisions of the rule is optional. The rule used the words "should" and "guidelines" to provide flexibility for facilities with unique circumstances. Those circumstances might be such that mandated regulatory provisions would not be in accord with good engineering practice. Therefore, the rule gave facilities the opportunity to provide alternative methods that achieve equivalent environmental protection, or to show that the provisions were inapplicable based on specific circumstances. In 1991, we proposed to clarify that misunderstanding by generally substituting "shall" in place of "should" throughout the reorganized rule. In the final rule, we have editorially changed "shall" to "must" in furtherance of the Agency's "plain language" objectives. The "shall" to "must" is not a substantive change. We will continue to provide flexibility for an owner or operator who can explain his reasons for nonconformance with rule requirements, and can provide alternate measures from those specified in the rule, which achieve equivalent environmental protection. Section 112.7(a)(2) will provide such flexibility. In the exercise of our authority to inspect facilities and SPCC Plans, we reserve the right to find that such alternate methods do not provide equivalent environmental protection. In such cases, we would require the owner or operator of the facility to amend the SPCC Plan to provide equivalent environmental protection.

- Cross-referencing: With the wide variation now allowed in differing formats, we need cross-referencing so that an inspector can tell whether the Plan meets Federal requirements, and whether it is complete. In addition, in order for an owner or operator to do his own check to ensure that his facility meets all SPCC requirements, he must go through the exercise of comparing his Plan to each SPCC requirement. Cross-referencing in the context of the rule means indicating the relationship of a requirement in the new format to an SPCC requirement. The cross-referencing must identify the Federal section and paragraph for each section of the new format it fulfills. If the Plan calls for additional facilities or procedures, methods, or equipment not yet fully operational, the owner or operator must discuss these items in separate paragraphs,

and must explain separately the details of installation and operational start-up. The discussion must include a schedule for the installation and start-up of these items.

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

- Editorial changes and clarifications: We have transferred all of the proposed substantive requirements in the 1997 proposed definition of "SPCC Plan" to the introduction of this section. We did this because definitions should not contain substantive requirements. We also revised the introduction to §112.7 to facilitate use of the active voice and to clearly note that the owner or operator, except as specifically noted, is responsible for implementing the rule.

  We deleted language requiring a "carefully thought-out" SPCC Plan. Such language is unnecessary because the Plan must be prepared in accordance with good engineering practices. Another editorial revision in the introduction is the change from "level with authority" in the last sentence of proposed §112.7(a) to "level of authority." A third revision is a change from "format" to "sequence."

  Consistent with response plan language in §112.20(h), the language referring to alternative SPCC formats has been revised to read "equivalent Plan acceptable to the Regional Administrator." The response plan language in

§112.20(h) on "equivalent response plans" has also been revised to include the "acceptable to the Regional Administrator" language included in the introduction to §112.7.

We clarify that the discussion of the facility's conformance with the requirements listed (see §112.7(a)(1)) means the requirements listed in part 112, not merely the requirements listed in §112.7.

As proposed in 1991 (56 FR 54620), we deleted §112.7(a), which required a description of certain discharges to navigable waters or adjoining shorelines which occurred prior to the effective date of the rule in 1974, because that information was no longer relevant.

Revised Rule	Old Rule
Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (a) . . . **(2) Comply with all applicable requirements listed in this part. 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), 112.12(c)(11),112.13(c)(2), and 112.14(c), 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 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), 112.12(c)(11), 112.13(c)(2), and 112.14(c), 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).**	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . [No direct counterpart in old rule.]

Notes

- Applicability: An owner or operator should have flexibility to substitute alternate measures

providing equivalent environmental protection in place of express requirements. Therefore, we allow deviations from the requirements in §112.7(g), (h)(2) and (3), or (i), as well as subparts B, and C, except for the listed secondary containment provisions in §112.7 and subparts B and C. We took this step because we believe that the application of good engineering practice requires the flexibility to use alternative measures when such measures offer equivalent environmental protection. This provision may be especially important in differentiating between requirements for facilities storing, processing, or otherwise using various types of oil.

A deviation may be used whenever an owner or operator can explain his reasons for nonconformance, and provide equivalent environmental protection. Possible rationales for a deviation include when the owner or operator can show that the particular requirement is inappropriate for the facility because of good engineering practice considerations or other reasons, and that he can achieve equivalent environmental protection in an alternate manner. For example, a requirement that may be essential for a facility storing gasoline may be inappropriate for a facility storing asphalt; or, the owner or operator may be able to implement equivalent environmental protection through an alternate technology. An owner or operator may consider cost as one of the factors in deciding whether to deviate from a particular requirement, but the alternate provided must achieve environmental protection equivalent to the required measure. The owner or operator must ensure that the design of any alternate device used as a deviation is adequate for the facility, and that the alternate device is adequately maintained. In all cases, the owner or operator must explain in the Plan his reason for nonconformance. We do not intend this deviation provision to be used as a means to avoid compliance with the rule or simply as an excuse for not meeting requirements the owner or operator believes are too costly. The alternate measure chosen must represent good engineering practice and must achieve environmental protection equivalent to the rule requirement. Technical deviations, like other substantive technical portions of the Plan requiring the application of engineering

judgment, are subject to PE certification.

- RA oversight*:* Once an RA becomes aware of a facility's SPCC Plan as a result of an on-site inspection or the submission of required information, he is to follow the principles of good engineering practice and not overrule a deviation unless it is clear that such deviation fails to afford equivalent environmental protection. This does not mean that the deviation must achieve "mathematical equivalency". But it does mean equivalent protection of the environment. We encourage innovative techniques, but such techniques must also protect the environment. We also believe that in general PEs will seek to protect themselves from liability by only certifying measures that do provide equivalent environmental protection. But the RA must still retain the authority to require amendments for deviations, as he can with other parts of the Plan certified by a PE.

- Not covered under the deviation rule*:* Deviations under §112.7(a)(2) are not allowed for the general and specific secondary containment provisions listed above because §112.7(d) contains the necessary requirements when an owner or operator of a facility finds that secondary containment is not practicable. We have amended both this paragraph and §112.7(d) to clarify this. Instead, the contingency planning and other requirements in §112.7(d) apply. Section §112.7(d) contains the measures which a facility owner or operator must undertake when the secondary containment requirements in §112.7 and subparts B and C are not practicable. Those measures are expressly tailored to address the lack of secondary containment at a facility. They include requirements to: explain why secondary containment is not practicable; conduct periodic integrity testing of bulk storage containers; conduct periodic integrity and leak testing of valves and piping; provide in the Plan a contingency plan following the provisions of 40 CFR part 109; and, provide a written commitment of manpower, equipment, and materials to expeditiously control and remove any quantity of oil discharged that may be harmful.
  Deviations are also not available for the general recordkeeping and training provisions in §112.7, as these requirements are meant to apply to all

facilities, or for the provisions of §112.7(f) and (j). We already provide flexibility in the manner of recordkeeping by allowing the use of ordinary and customary business records. Training and a discussion of compliance with more stringent State rules are essential for all facilities. Therefore, we do not allow deviations for these measures.

Revised Rule	Old Rule
Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (a) . . . **(3) Describe in your Plan the physical layout of the facility and include a facility diagram, which must mark the location and contents of each container. The facility diagram must include completely buried tanks that are otherwise exempted from the requirements of this part under §112.1(d)(4). The facility diagram must also include all transfer stations and connecting pipes. You must also address in your Plan:** **(i) The type of oil in each container and its storage capacity;** **(ii) Discharge prevention measures including procedures for routine handling of products (loading, unloading, and facility transfers, etc.);** **(iii) Discharge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge;** **(iv) Countermeasures for discharge discovery, response, and cleanup (both the facility's capability and those that might be required of a contractor);** **(v) Methods of disposal of recovered materials in accordance with applicable legal requirements; and** **(vi) Contact list and phone numbers for the facility response coordinator, National Response Center, cleanup contractors with whom you have an agreement for response, and all appropriate Federal, State, and local agencies who must be contacted in case of a discharge as described in §112.1(b).**	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . [No direct counterpart in old rule.]

Notes

· General description of characteristics: The

following characteristics must be described on a per-container basis: the storage capacity of the container, type of oil in each container, and secondary containment for each container. The major new requirement in §112.7(a)(3) is the facility diagram. The other items mentioned in §112.7(a)(3) – storage capacity of each container, prevention measures, discharge controls, countermeasures, disposal methods, and the contact list – are already required under the current rule or required by good engineering practice. Providing information on a container-specific basis helps the facility to prioritize inspections and maintenance of containers based on characteristics such as age, capacity, or location. It also helps inspectors to prioritize inspections of higher-risk containers at a facility. Container-specific information helps an inspector verify the capacity calculation to determine whether a Plan is needed; and, helps to formulate contingency planning if such planning is necessary.

- Facility diagram: The facility diagram is important because it is used for effective prevention, planning, management (for example, inspections), and response considerations. The diagram will help the facility and emergency response personnel to plan for emergencies. For example, the identification of the type of oil in each container may help such personnel determine the risks when conducting a response action. Some oils present a higher risk of fire and explosion than other less flammable oils. Inspectors and personnel new to the facility need to know the location of all containers subject to the rule. The facility diagram may also help first responders to determine the pathway of the flow of discharged oil. If responders know possible pathways, they may be able to take measures to control the flow of oil. Such control may avert damage to sensitive environmental areas; may protect drinking water sources; and may help responders to prevent discharges to other conduits leading to a treatment facility or navigable waters. Diagrams may assist Federal, State, or facility personnel to avoid certain hazards and to respond differently to others. The facility diagram is necessary for all facilities, large or small, because the rationale is the same for both. While some States may require a

diagram, others do not. SPCC is a Federal program specifying minimum requirements, which the States may supplement with their own more stringent requirements. State plans may be used as SPCC Plans if they meet all Federal requirements, thus avoiding any duplication of effort.

- Facility diagram – container contents: The facility diagram must include all fixed (i.e., not mobile or portable) containers which store 55 gallons or more of oil and must include information marking the contents of those containers. If store mobile containers are stored in a certain area, the owner or operator of the facility must mark that area on the diagram. He may mark the contents of each container either on the diagram of the facility, or on a separate sheet or log if those contents change on a frequent basis. Marking containers makes for more effective prevention, planning, management, and response. For example, a responder may take one type of emergency measure for one type of oil, and another measure for another type. As noted above, oils differ in their risk of fire and explosion. Gasoline is highly flammable and volatile. It presents the risk of fire and inhalation of vapors when discharged. However, motor oil is not highly flammable, and there is no inhalation of vapors hazard associated with its discharge. In an emergency, the responder may not have container content information unless it is clearly marked on a diagram, log, or sheet. For emergency response purposes, we also encourage, but do not require you to mark on the facility diagram containers that store CWA hazardous substances and to label the contents of those containers. When the contents of an oil container change, this may or may not be a material change (see§112.5(a)).

- Facility diagram – Transfer stations, connecting pipes, and USTs: All facility transfer stations and connecting pipes that handle oil must be included in the diagram. This will help facilitate response by informing responders of the location of this equipment. The location of all containers and connecting pipes that store oil (other than *de minimis* containers) must be marked, including USTs and other containers not subject to SPCC rules which are present at SPCC facilities. This

is necessary to facilitate response by informing responders of the location of these containers.

- Discharge prevention measures: We use the term "discharge prevention measures" because it encompasses both secondary containment and other discharge prevention measures.

- Drainage controls: We include a reference to drainage controls in the paragraph because drainage systems or diversionary ponds might be an alternative means of secondary containment (see §112.7(c)(1)(iii) and (v)).

- Discharge countermeasures: A discussion of discovery, response, and cleanup in the Plan is necessary in order to be prepared for any discharges. This information is required here, as opposed to a response section, because most SPCC facilities are not required to have response plans, and the information is necessary to prepare for discharge discovery, response, and cleanup.

- Disposal of recovered materials: This provision applies to all facilities, including mobile facilities, because proper disposal of recovered materials helps prevent a discharge as described in §112.1(b) by ensuring that the materials are managed in an environmentally sound manner. Proper disposal also assists response efforts. If a facility lacks adequate resources to dispose of recovered oil and oil-contaminated material during a response, it limits how much and how quickly oil and oil-contaminated material is recovered, thereby increasing the risk and damage to the environment. The paragraph requires a discussion of the methods employed to dispose of recovered materials; it does not require that materials recovered be "disposed" of in any particular manner nor is it an independent requirement to properly dispose of materials. There is no infringement on or duplication of any other State or Federal program or regulatory authority. We assume that good engineering practice will in many cases include a discussion of such disposal already. By describing those methods in the Plan, an owner or operator helps to ensure that the facility has done the appropriate planning to be able to dispose of recovered materials, should a discharge occur. We support the recycling of spilled oil to the extent possible,

rather than its disposal. For purposes of this rule, disposal of recovered materials includes recycling of those materials.

- Contact list: We have amended the rule to require that the cleanup contractor listed must be the one with whom the facility has an agreement for response that ensures the availability of the necessary personnel and equipment within appropriate response times. This information is presented here, rather than in a response section, because most SPCC facilities are not required to have response plans, and the information is necessary to prepare for response to an emergency. An agreement to respond may include a contract or some less formal relationship with a cleanup contractor. No formal written agreement to respond is required by the SPCC rule, but if one exists, it must be discussed in the Plan. We refer to "all appropriate State and local agencies." "Appropriate" means those State and local agencies that must be contacted due to Federal or State requirements, or pursuant to good engineering practice. An owner or operator may not always be required to notify fire departments, local emergency planning committees (LEPCs), and State emergency response commissions (SERCs), nor as an engineering practice do they always need to receive direct notice from the facility in the event of a discharge as described in §112.1(b). At times they might, but they might also receive notice from other sources (e.g., the National Response Center). Other State and local agencies might also need notice from the owner or operator. We added the word "Federal" to the list of all appropriate contact agencies because there are times when an owner or operator must notify EPA of certain discharges (see §112.4(a)). There might also be requirements under Federal statutes other than the CWA, for notice in such emergencies.

  We have ample authority to ask for information concerning emergency contacts under the CWA because it is relevant to the statute's prevention, preparedness, and response purposes. Furthermore, it is an appropriate question for all facilities, including mobile facilities, because it is necessary to prepare for discharges and to aid in prompt cleanup when they occur. Having a Plan

which contains a contact list of response organizations is a procedure and method to contain a discharge of oil as specified in CWA section 311(j)(1)(C).

Revised Rule	Old Rule
Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (a) . . . **(4) Unless you have submitted a response plan under §112.20, provide information and procedures in your Plan to enable a person reporting a discharge as described in §112.1(b) to relate information on the exact address or location and phone number of the facility; the date and time of the discharge, the type of material discharged; estimates of the total quantity discharged; estimates of the quantity discharged as described in §112.1(b); the source of the discharge; a description of all affected media; the cause of the discharge; any damages or injuries caused by the discharge; actions being used to stop, remove, and mitigate the effects of the discharge; whether an evacuation may be needed; and, the names of individuals and/or organizations who have also been contacted.**	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . [No direct counterpart in old rule.]

Notes

- Information and procedures: We revised the rule to provide for "information and procedures" that would assist the reporting of discharges as described in §112.1(b). "Information" refers to the facts that an owner or operator must report, and "procedures" refers to the method of reporting those facts. Such procedures must address whom the person relating the information should call, in what order the caller should call potential responders and others, and any other instructions necessary to facilitate notification of a discharge as described in §112.1(b). If properly noted, the information and procedures in the Plan should enable a person reporting a discharge to accurately describe information concerning that occurrence to the proper persons in an emergency. Any information or procedure not applicable will not have to be used. Available information on a discharge must be reported. Applicable procedures must be followed.

- State requirements: Where this information is duplicative with State requirements, the owner or operator can use a State SPCC Plan for Federal SPCC purposes.

- Response plan applicability: This information is required here, rather than in a response section, because most SPCC facilities are not required to have response plans, and the information is necessary to prepare for response to an emergency. However, if a facility has prepared and submitted a response plan to us under §112.20, there is no need to document this information in the SPCC Plan, because it is already contained in the response plan (see §112.20(h)(1)(i)-(viii)).

Revised Rule	Old Rule
Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (a) . . . **(5) Unless you have submitted a response plan under §112.20, organize portions of the Plan describing procedures you will use when a discharge occurs in a way that will make them readily usable in an emergency, and include appropriate supporting material as appendices.**	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . [No direct counterpart in old rule.]

Notes

- Background: This paragraph ensures that portions of the Plan describing procedures to be used in emergency circumstances are organized in a manner to make them readily usable in an emergency. Because this information would repeat information contained in a response plan submitted under §112.20, we have excluded from the requirements of this paragraph those facilities which have submitted response plans (see §112.20(h)(3)(i)-(ix)).

Revised Rule	Old Rule
Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (b) Where experience indicates a reasonable potential for equipment failure (such as *loading or unloading equipment*, tank overflow, rupture, or leakage, *or any other equipment known to be a source of a discharge*), *include in your Plan* a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each *type of major equipment failure*.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (b) Where experience indicates a reasonable potential for equipment failure (such as tank overflow, rupture, or leakage), the plan should include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each major type of failure. . . . . .

Notes

- Applicability: The Plan must only discuss potential failure situations that might result in a discharge from the facility, not any failure situation. When experience indicates a reasonable potential for failure of equipment, the Plan must contain certain information relevant to those failures. "Experience" includes the experience of the facility and the industry in general. The requirement should not be too difficult for owners or operators of small or mobile facilities, or of flowlines or gathering lines, or of electrical equipment facilities, or other users of oil. We believe that a Professional Engineer may evaluate the potential risk of failure for the aforementioned facilities and equipment and predict with a certain degree of accuracy the result of a failure from each. Since we have raised the regulatory threshold, this requirement will not be applicable to many smaller facilities.

- Failure factors: To comply with this section, an owner or operator must only address "major equipment" failures. A major equipment failure is one which could cause a discharge as described in §112.1(b), not a minor failure possibility. To help clarify the type of equipment failures the rule contemplates, we have added examples of other types of failures that would trigger the requirements of this paragraph. Such other equipment failures include failures of loading/unloading equipment, or of any other

equipment known to be a source of a discharge.

The analysis required will depend on the experience of the facility and how sophisticated the facility equipment is. If the facility has simpler equipment, there will be less to detail. If the facility has more sophisticated equipment, a more detailed analysis is appropriate. If the facility's experience or industry experience in general indicates a higher risk of failure associated with the use of that equipment, the analysis will also have to be more detailed. This rationale and analytic detail are also applicable to electrical equipment facilities and other facilities that do not store oil, but contain it for operational use. Again, the required explanation will be tailored to the type of equipment used and the experience with that equipment.

- Spill pathways: The level of analysis of spill pathways will depend on the geographic characteristics of the facility's site and the possibility of a discharge as described in §112.1(b) that equipment failure might cause. However, the Professional Engineer should focus on the most obvious spill pathways.
  Because this information is facility-specific, the owner or operator of a mobile facility will not be able to detail spill pathways in the general Plan for the facility each time the facility moves. However, the owner or operator must provide management practices in the general Plan that provide for containment of discharges in spill pathways in a variety of geographic conditions likely to be encountered. In case of a discharge at a particular facility, the owner or operator would then take appropriate action to contain or remove the discharge. For example, the Plan may provide that a rig must be positioned to minimize or prevent discharges as described in §112.1(b); or it may provide for the use of spill pans, drip trays, excavations, or trenching to augment discharge prevention.

Revised Rule	Old Rule
Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (c) *Provide* appropriate containment and/or diversionary structures or equipment to prevent *a discharge as described in §112.1(b). 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*:* (1) For onshore facilities: (i) Dikes, berms, or retaining walls sufficiently impervious to *contain oil*; (ii) Curbing; (iii) Culverting, gutters, or other drainage systems; (iv) Weirs, booms, or other barriers; (v) Spill diversion ponds; (vi) Retention ponds; or (vii) Sorbent materials. (2) For offshore facilities: (i) Curbing or drip pans; or (ii) Sumps and collection systems.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (c) Appropriate containment and/or diversionary structures or equipment to prevent discharged oil from reaching a navigable water course should be provided. One of the following preventive systems or its equivalent should be used as a minimum: (1) Onshore facilities: (i) Dikes, berms or retaining walls sufficiently impervious to contain spilled oil; (ii) Curbing; (iii) Culverting, gutters or other drainage systems; (iv) Weirs, booms or other barriers; (v) Spill diversion ponds; (vi) Retention ponds; (vii) Sorbent materials. (2) Offshore facilities: (i) Curbing, drip pans; (ii) Sumps and collection systems. . . . . .

Notes

- Contingency planning: A contingency plan should not be used routinely as a substitute for secondary containment because we believe it is normally environmentally better to contain oil than to clean it up after it has been discharged. Secondary containment is intended to contain discharged oil so that it does not leave the facility and contaminate the environment. The proper method of secondary containment is a matter of good engineering practice, and so we do not prescribe here any particular method. Under part 112, where secondary containment is not practicable, you may deviate from the

requirement, provide a contingency plan following the provisions of 40 CFR part 109, and comply with the other requirements of §112.7(d). For bulk storage containers, those requirements include both periodic integrity testing of the containers and periodic integrity and leak testing of the valves and piping. You must also provide a written commitment of manpower, equipment, and materials to expeditiously control and remove any quantity of oil discharged that may be harmful.

- Applicability of requirement: Secondary containment is best for most facilities storing or using oil because it is the most effective method to stop oil from migrating beyond that containment. We believe that secondary containment is preferable to a contingency plan at manned and unmanned facilities because it prevents discharges as described in §112.1(b). At unmanned facilities, it may be even more important because of the lag in time before a discharge may be discovered. Notwithstanding what may be difficult terrain, we believe that some form of secondary containment is practicable at most facilities, including remote production facilities. In fact, it may often be more feasible in remote or rural areas because there are fewer space limitations in such areas. For example, at some remote mobile or production facilities, owners or operators dig trenches and line them for containment or retention of drilling fluids. Technologies used at offshore facilities to catch or contain oil may also sometimes be used onshore.

  While some types of secondary containment (for example, dikes or berms) may not be appropriate at certain facilities, other types (for example, diversionary systems or remote impounding) might. However, we recognize that some or perhaps all types of secondary containment for certain facilities with equipment that contain oil, such as electrical equipment, may be contrary to safety factors or other good engineering practice considerations. Other equipment, like fired or pressurized vessels, might have safety considerations that preclude some or all types of secondary containment.

  Some facilities or equipment that use but do not

store oil may or may not, as a matter of good engineering practice, employ secondary containment. Such facilities might include wastewater treatment facilities, whose purpose is not to store oil, but to treat water. Other facilities that may not find the requirement practicable are those that use oil in equipment such as hydraulic equipment. Similarly, flowlines must have a program of maintenance to prevent discharges (see §112.9(d)(3)). The maintenance program may or may not include secondary containment. Owners or operators of underground piping must have some form of corrosion protection, but do not necessarily have to use secondary containment for that purpose.

For a facility where secondary containment is not practicable, the owner or operator is not exempt from the requirement, but may instead provide a contingency plan and take other measures required under §112.7(d). For most facilities, however, including small facilities, mobile facilities, production facilities, mining sites, and any other facilities that store or use oil, we believe that secondary containment is generally necessary and appropriate to prevent a discharge as described in §112.1(b). Without secondary containment, discharges from containers would often reach navigable waters or adjoining shorelines, or affect natural resources.

- Methods of secondary containment: The appropriate method of secondary containment is an engineering question. Earthen or natural structures may be acceptable if they contain and prevent discharges as described in §112.1(b), including containment that prevents discharge of oil to groundwater that is connected to navigable water. What is practical for one facility, however, might not work for another. If secondary containment is not practicable, then the facility must provide a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with §112.7(d).

- Double-walled or vaulted tanks: The term "vaulted tank" has been used to describe both double-walled tanks (especially those with a concrete outer shell) and tanks inside underground vaults, rooms, or crawl spaces. While double-walled or vaulted tanks are subject

to secondary containment requirements, shop-fabricated double-walled aboveground storage tanks equipped with adequate technical spill and leak prevention options might provide sufficient equivalent secondary containment as that required under §112.7(c). Such options include overfill alarms, flow shutoff or restrictor devices, and constant monitoring of product transfers. In the case of vaulted tanks, the Professional Engineer must determine whether the vault meets the requirements for secondary containment in §112.7(c). This determination should include an evaluation of drainage systems and of sumps or pumps which could cause a discharge of oil outside the vault. Industry standards for vaulted tanks often require the vaults to be liquid tight, which if sized correctly, may meet the secondary containment requirement. There might also be other examples of such alternative systems.

- Completely buried tanks: Completely buried tanks, other than those exempted from this rule because they are subject to all technical Federal or State UST requirements, are subject to the secondary containment requirement. We realize that the concept of freeboard for precipitation is inapplicable to secondary containment for completely buried tanks. The requirement for secondary containment may be satisfied in any of the ways listed in the rule or their equivalent.

- "Sufficiently impervious" standard: We retained the current standard that dikes, berms, or retaining walls must be sufficiently impervious to contain oil. The purpose of secondary containment is to contain oil from escaping the facility and reaching the environment. An owner or operator of a facility should have flexibility in how he prevents a discharge as described in §112.1(b), and any method of containment that achieves that end is sufficient. Should such containment fail, the owner or operator must immediately clean up any discharged oil.

  Because the purpose of the "sufficiently impervious" standard is to prevent discharges as described in §112.1(b), dikes, berms, or retaining walls must be capable of containing oil and preventing such discharges. Discharges as

described in §112.1(b) may result from direct discharges from containers, or from discharges from containers to groundwater that travel through the groundwater to navigable waters. Effective containment means that the dike, berm, or retaining wall must be capable of containing oil and sufficiently impervious to prevent discharges from the containment system until it is cleaned up. The same holds true for container floors or bottoms; they must be able to contain oil to prevent a discharge as described in §112.1(b). However, "effective containment" does not mean that liners are required for secondary containment areas. Liners are an option for meeting the secondary containment requirements, but are not required by the rule.

An owner or operator of a facility subject to this part must prepare a Plan in accordance with good engineering practice. A complete description of how secondary containment is designed, implemented, and maintained to meet the standard of sufficiently impervious is necessary. In order to document that secondary containment is sufficiently impervious and sufficiently strong to contain oil until it is cleaned up, the Plan must describe how the secondary containment is designed to meet that standard. A written description of the sufficiently impervious standard is not only necessary for design and implementation, but will aid owners or operators of facilities in determining which practices will be necessary to maintain the standard of sufficiently impervious. Control and/or removal of vegetation may be necessary to maintain the impervious integrity of the secondary containment. Repairs of excavations or other penetrations through secondary containment will need to be conducted in accordance with good engineering practices in order to maintain the standard of sufficiently impervious. The owner or operator should monitor such imperviousness for effectiveness, in order to be sure that the method chosen remains impervious to contain oil.

- Sufficient freeboard: See §112.8(c)(2) for a discussion of this topic.

- Industry standards: Industry standards that may assist an owner or operator with secondary containment include: (1) NFPA 30; (2) BOCA,

National Fire Prevention Code; and, (3) API Standard 2610, "Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities."

Revised Rule	Old Rule
Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (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), 112.12(c)(11), 112.13(c)(2), and 112.14(c) 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:* (1) An oil spill contingency plan following the provisions of *part 109 of this chapter*. (2) A written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged *that may be harmful*.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (d) When it is determined that the installation of structures or equipment listed in Sec. 112.7(c) to prevent discharged oil from reaching the navigable waters is not practicable from any onshore or offshore facility, the owner or operator should clearly demonstrate such impracticability and provide the following: (1) A strong oil spill contingency plan following the provision of 40 CFR part 109. (2) A written commitment of manpower, equipment and materials required to expeditiously control and remove any harmful quantity of oil discharged. . . . . .

Notes

- Background: The revised rule adds requirements for periodic integrity testing of containers, and periodic integrity and leak testing of valves and piping. We clarify that if an owner or operator has submitted a facility response plan under §112.20 for a facility, he need not provide for that facility either a contingency plan following the provisions of part 109 or a written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful.

- Planning requirements: Under the old rule, contingency planning was necessary whenever an

owner or operator determines that a secondary containment system for any part of the facility that might be the cause of a discharge as described in §112.1(b) is not practicable. This requirement applied whether the facility is manned or unmanned, urban or rural, and for large and small facilities. The revised rule exempts from the contingency planning requirement any facility that has submitted a response plan under §112.20, because such a response plan is more comprehensive than a contingency plan following part 109.
We believe that it may be appropriate for an owner or operator to consider costs or economic impacts in determining whether he can meet a specific requirement that falls within the general deviation provision of §112.7(a)(2). We believe so because under this section, the owner or operator will still have to utilize good engineering practices and come up with an alternative that provides "equivalent environmental protection." However, we believe that the secondary containment requirement in §112.7(d) is an important component in preventing discharges as described in §112.1(b) and is environmentally preferable to a contingency plan prepared under 40 CFR part 109. Thus, we do not believe it is appropriate to allow an owner or operator to consider costs or economic impacts in any determination as to whether he can satisfy the secondary containment requirement. Instead, the owner or operator may only provide a contingency Plan in his SPCC Plan and otherwise comply with §112.7(d). Therefore, the purpose of a determination of impracticability is to examine whether space or other geographic limitations of the facility would accommodate secondary containment; or, if local zoning ordinances or fire prevention standards or safety considerations would not allow secondary containment; or, if installing secondary containment would defeat the overall goal of the regulation to prevent discharges as described in §112.1(b).

In following the provisions of part 109, an owner or operator must address the oil removal contingency planning criteria listed in 40 CFR 109.5 and ensure that all response actions are coordinated with governmental oil spill response organizations. The absence of secondary

containment will place extreme importance on the early detection of an oil discharge and rapid response by the facility to prevent that discharge. Part 109 was originally promulgated to assist State and local government oil spill response agencies to prepare oil removal contingency plans in the inland response zone, where EPA provides the On-Scene Coordinator. The basic criteria for contingency planning listed in §109.5 apply to any SPCC regulated facility that has adequately justified the impracticability of installing secondary containment, irrespective of whether it is a government agency or the facility is located in the coastal (U.S. Coast Guard) or inland (EPA) response zone. Because the contingency plan involves good engineering practice and is technically a material part of the Plan, PE certification is required.

A contingency plan prepared under RCRA rules might suffice for purposes of the rule if the plan fulfills the requirements of part 109, and the PE certifies that such plan is adequate for the facility. If the RCRA contingency plan satisfies some but not all SPCC requirements, an owner or operator must supplement it so that it does.

The contingency plan (or any other deviation) does not have to be submitted to the Regional Administrator for his review and approval because we believe that it is sufficient that the contingency plan (or other deviation) be available for on-site inspection.

- Integrity and leak testing: "Integrity testing" is any means to measure the strength (structural soundness) of the container shell, bottom, and/or floor to contain oil and may include leak testing to determine whether the container will discharge oil. Facility components that might cause a discharge as described in §112.1(b) include containers, piping, valves, or other equipment or devices. Integrity testing includes, but is not limited to, testing foundations and supports of containers. Its scope includes both the inside and outside of the container. It also includes frequent observation of the outside of the container for signs of deterioration, leaks, or accumulation of oil inside diked areas. Such testing is also applicable to valves and piping. See API Standard 653 for further information on

this term.

"Leak testing" is testing to determine the liquid tightness of valves and piping and whether they may discharge oil. Facilities that store oil, whether they are mines or other businesses, are required to employ integrity testing for their bulk storage containers, and integrity and leak testing for their valves and piping, to help prevent discharges. Containers that do not store oil, but merely use oil, are not subject to the requirement.

We reaffirm the applicability of integrity and leak testing to both large and small facilities, because we believe such testing requirements help prevent discharges as described in §112.1(b) at those facilities. Integrity and leak testing requirements are also applicable for containers and valves and piping that are entirely within buildings, or within mines, because in either case, such containers, or valves and piping may become the source of a discharge as described in §112.1(b). We have revised the rule to reflect that the requirement applies only to onshore and offshore bulk storage facilities. Therefore, a facility with only oil-filled electrical, operating, or manufacturing equipment need not conduct such testing nor incur any costs for such testing. We assume that this provision represents a negligible additional burden because most facilities are already testing such valves and gathering lines according to industry standards as a matter of good engineering practice.

Rather than proscribe a testing frequency, we require "periodic" integrity testing of containers, and "periodic" integrity and leak testing of valves and piping. "Periodic" testing means testing according to a regular schedule consistent with accepted industry standards. We believe that use of industry standards, which change over time, will prove more feasible than providing a specific and unchanging regulatory requirement. As required by §112.8(c)(6), integrity testing of containers must be accomplished by a combination of visual testing and some other technique.

- Written commitment: A "written commitment" of manpower, equipment, and materials means either a written contract or other written

documentation showing that an owner or operator has made provision for those items for response purposes. Such commitment must be shown by: the identification and inventory of applicable equipment, materials, and supplies which are available locally and regionally; an estimate of the equipment, materials, and supplies which would be required to remove the maximum oil discharge to be anticipated; and, development of agreements and arrangements in advance of an oil discharge for the acquisition of equipment, materials, and supplies to be used in responding to such a discharge (40 CFR 109.5(c)).

The commitment also involves making provisions for well-defined and specific actions to be taken after discovery and notification of an oil discharge including: specification of an oil discharge response operating team consisting of trained, prepared, and available operating personnel; predesignation of a properly qualified oil discharge response coordinator who is charged with the responsibility and delegated commensurate authority for directing and coordinating response operations and who knows how to request assistance from Federal authorities operating under current national and regional contingency plans; a preplanned location for an oil discharge response operations center and a reliable communications system for directing the coordinated overall response actions; provisions for varying degrees of response effort depending on the severity of the oil discharge; and, specification of the order of priority in which the various water uses are to be protected where more than one water use may be adversely affected as a result of an oil discharge and where response operations may not be adequate to protect all uses (40 CFR 109.5(d)).

- Industry standards: Industry standards that may assist an owner or operator with the integrity testing of containers, and the integrity and leak testing of piping and valves include: (1) API Standard 653, “Tank Inspection, Repair, Alteration, and Reconstruction”; (2) API Recommended Practice 575, “Inspection of Atmospheric and Low-Pressure Tanks”; (3) API Standard 570, “Piping Inspection Code (Inspection, Repair, Alteration, and Rerating of In-Service Piping Systems)”; (4) American

Society of Mechanical Engineers (ASME) B31.3, "Process Piping"; (5) ASME 31.4, "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols"; (6) Steel Tank Institute Standard SP001-00, "Standard for Inspection of In-Service Shop Fabricated Aboveground Tanks for Storage of Combustible and Flammable Liquids"; and, (7) Underwriters Laboratory (UL) Standard 142, "Steel Aboveground Tanks for Flammable and Combustible Liquids."

Revised Rule	Old Rule
Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) Inspections, *tests*, and records. *Conduct* inspections *and tests* required by this *part in accordance* with written procedures *that you or the certifying engineer develop for the facility. You must keep* these written procedures and a record of the inspections and tests, signed by the appropriate supervisor or inspector, with the SPCC Plan for a period of three years. **Records of inspections and tests kept under usual and customary business practices will suffice for purposes of this paragraph.**	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (8) *Inspections and records*. Inspections required by this part should be in accordance with written procedures developed for the facility by the owner or operator. These written procedures and a record of the inspections, signed by the appropriate supervisor or inspector, should be made part of the SPCC Plan and maintained for a period of three years. . . . . . .

Notes

- Background: The revised rule allows use of usual and customary business records to serve as a record of tests or inspections, instead of keeping duplicate records. It also allows the owner or operator to keep those records as an appendix to the Plan, or in a separate log, etc., with the Plan, rather than requiring that those records be a part of the Plan. The rule also acknowledges that the certifying engineer, as well as the owner or operator, has a role in the development of inspection procedures.

- Maintenance with Plan: It is not necessary to maintain records as part of the Plan. Therefore, the rule allows "keeping" of the records "with" the Plan, but not as part of it. Under the old rule, such records "should be made part of the SPCC Plan...." Because an owner or operator continually updates these records, this change will eliminate the need to amend the Plan each time old records are removed and new ones are added. If desired, an owner or operator can still make these records a part of the Plan.

- Records required: The rule permits use of usual and customary business records, and covers all of the inspections and tests required by this part as well as any ancillary records. "Inspections and tests" include not only inspections and tests, but

schedules, evaluations, examinations, descriptions, and similar activities required by this part. We will list all of the inspections and tests required by part 112 on our website (www.epa.gov/oilspill). The applicability of each inspection and test will depend on the exercise of good engineering practice, because not every one will be applicable to every facility.

- Form of records: 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. Usual and customary business records may be those ordinarily used in the industry, including those made under API standards, Underwriters' Laboratories standards, NPDES permits, a facility's QS-9000 or ISO-14000 system, or any other format acceptable to the Regional Administrator. If an owner or operator chooses to use records associated with compliance with industry standards, such as Underwriters' Laboratories standards, he must closely review the inspection, testing, and recordkeeping requirements of this rule to ensure that any records kept in accordance with industry standards meets the intent of the rule. Some standards have limited recordkeeping requirements and may only address a particular aspect of container fabrication, installation, inspection, and operation and maintenance. An owner or operator will not have to maintain duplicate sets of records when one set has already been prepared under industry or regulatory purposes that also fully suffices for SPCC purposes. The use of these alternative record formats is optional.

- Time period: Maintenance of records for three years is sufficient for SPCC purposes, since that period will allow for meaningful comparisons of inspections and tests taken. Therefore, there will be no new costs. Certain industry standards, for example API Standards 570 and 653, may specify record maintenance for more than three years.

Revised Rule	Old Rule
Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (f) <u>Personnel, training, and discharge prevention procedures.</u> (1) *At a minimum, train your* **oil-handling** personnel in the operation and maintenance of equipment to *prevent discharges; discharge procedure protocols;* applicable pollution control laws, rules, and regulations*; general facility operations; and,* **the contents of the facility SPCC Plan**. (2) *Designate a person at each applicable facility who is accountable for discharge prevention and who reports to facility management.* (3) Schedule and conduct *discharge prevention* briefings for *your* **oil-handling** personnel **at least once a year** to assure adequate understanding of the SPCC Plan for that facility. Such briefings *must* highlight and describe known *discharges as described in §112.1(b)* or failures, malfunctioning components, and any recently developed precautionary measures.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (10) <u>Personnel, training and spill prevention procedures</u>. (i) Owners or operators are responsible for properly instructing their personnel in the operation and maintenance of equipment to prevent the discharges of oil and applicable pollution control laws, rules and regulations. (ii) Each applicable facility should have a designated person who is accountable for oil spill prevention and who reports to line management. (iii) Owners or operators should schedule and conduct spill prevention briefings for their operating personnel at intervals frequent enough to assure adequate understanding of the SPCC Plan for that facility. Such briefings should highlight and describe known spill events or failures, malfunctioning components, and recently developed precautionary measures. . . . . .

Notes

- <u>Background</u>: The revised rule mandates training only for oil-handling employees, instead of all employees. It specifies additional topics for the training of these employees. It also specifies that discharge prevention briefings must be conducted at least once a year, instead of at "intervals frequent enough to assure adequate understanding of the SPCC Plan for that facility."

- <u>Applicability of training requirements</u>: We believe that training requirements should apply to all facilities, large or small, including all those that store or use oil, regardless of the amount of oil transferred in any particular time. Training may help avert human error, which is a principal cause of oil discharges. "Spills from ASTs may occur as a result of operator error, for example,

during loading operations (e.g., vessel or tank truck, AST transfer operation), or as a result of structural failure (e.g., brittle fracture) because of inadequate maintenance of the AST" (EPA Liner Study, at 14). The 1995 SPCC Survey found that operator error was the most common spill cause for facilities in 9 of the 19 industry categories that reported having spills. Also, the August 1994 draft report of the EPA Aboveground Oil Storage Facilities Workgroup called "Soil and Ground Water Contamination from Aboveground Oil Storage Facilities: A Strategic Study" presented data on causes of discharges from two studies. Both studies showed that error during product transfer activities is one of the biggest known causes of discharges at AST facilities. Two other studies also support our contention: Carter, W.J., "How API Viewed the Needs for Aboveground Storage Tanks," Tank Talk, Vol. 7, July/August 1992, p.2.; and U.S. EPA, "The Technical Background Document to Support the Implementation of OPA Response Plan Requirements," Emergency Response Division, Office of Solid Waste and Emergency Response, February 1993, p.4-19. We therefore retained the applicability of training to all facilities. The rule requires that all facilities, whether bulk storage facilities or facilities that merely use oil, train oil-handling employees because all facilities have the potential for a discharge as described in §112.1(b), and training is necessary to avert such a discharge.

Training is only necessary for personnel who will use it to carry out the requirements of this rule. "Oil-handling personnel" will be interpreted according to industry standards, but includes employees engaged in the operation and maintenance of oil storage containers or the operation of equipment related to storage containers and emergency response personnel. We do not interpret the term to include secretaries, clerks, and other personnel who are never involved in operation or maintenance activities related to oil storage or equipment, oil transfer operations, emergency response, countermeasure functions, or similar activities.

An owner or operator may incorporate SPCC training requirements into already existing training programs required by other Federal or

State law or may conduct SPCC training separately. The owner or operator must document that he has conducted required training courses. Such documentation must be maintained with the Plan for three years.

- Timing of employee training: The revised rule leaves the timing and number of hours of training of oil-handling employees, including new employees, to the employer's discretion. "Proper instruction" of oil-handling employees, as required in the rule, means in accordance with industry standards or at a frequency sufficient to prevent a discharge as described in §112.1(b). This standard will allow facilities more flexibility to develop training programs better suited to the particular facility. While the rule requires annual discharge prevention briefings, the annual briefings required are not drills. In any case, the SPCC rules do not require drills, as explained below.

- Discharge prevention briefings: Annual discharge prevention briefings are necessary, but there should be more frequent briefings where appropriate. Such briefings are necessary to refresh employees' memories on facility Plan provisions and to update employees on the latest prevention and response techniques. Training must include the contents of the facility Plan. Although it is desirable, we are not requiring SPCC briefings to include emergency response training – such training is already required for facilities that must prepare response plans.

- Content of training: Specifying a minimum list of training subjects is necessary to ensure that facility employees are aware of discharge prevention procedures and regulations. We added knowledge of discharge procedure protocols to the list of training subjects because such training will help avert discharges. Training must include, at a minimum: the operation and maintenance of equipment to prevent the discharge of oil; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the facility Plan. The training must address relevant maintenance activities at the facility. For example, if there is no transfer and handling of oil, such topic need

not be covered in training.

Revised Rule	Old Rule
Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (g) Security (excluding oil production facilities). (1) *Fully fence each facility* handling, processing, or storing oil, *and lock and/or guard entrance gates when the facility* is not in production or is unattended. (2) *Ensure that the* master flow and drain valves and any other valves *permitting* direct outward flow of the *container's* contents to the surface *have adequate security measures so that they remain* in the closed position when in non-operating or non-standby status. (3) *Lock the starter control on each oil pump in the "off" position and locate it at* a site accessible only to authorized personnel when the *pump is* in a non-operating or non-standby status. (4) *Securely cap or blank-flange the loading/unloading connections of oil pipelines or facility piping* when not in service or *when in* standby service for an extended time. This security practice also applies to *piping* that *is* emptied of liquid content either by draining or by inert gas pressure. (5) *Provide facility lighting* commensurate with the type and location of the facility *that will assist in the*: (i) Discovery of *discharges* occurring during hours of darkness, both by operating personnel, if present, and by non-operating personnel (the general public, local police, etc.); and (ii) Prevention of discharges occurring through acts of vandalism.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (9) Security (excluding oil production facilities). (i) All plants handling, processing, and storing oil should be fully fenced, and entrance gates should be locked and/or guarded when the plant is not in production or is unattended. (ii) The master flow and drain valves and any other valves that will permit direct outward flow of the tank's content to the surface should be securely locked in the closed position when in non-operating or non-standby status. (iii) The starter control on all oil pumps should be locked in the "off" position or located at a site accessible only to authorized personnel when the pumps are in a non-operating or non-standby status. (iv) The loading/unloading connections of oil pipelines should be securely capped or blank-flanged when not in service or standby service for an extended time. This security practice should also apply to pipelines that are emptied of liquid content either by draining or by inert gas pressure. (v) Facility lighting should be commensurate with the type and location of the facility. Consideration should be given to: (A) Discovery of spills occurring during hours of darkness, both by operating personnel, if present, and by non-operating personnel (the general public, local police, etc.) and (B) prevention of spills occurring through acts of vandalism. . . . . . .

Notes

Applicability of requirements: The revised rule clarifies that security measures are requirements (i.e., not discretionary provisions) under the regulation. We believe that fencing, facility lighting, and the other measures prescribed in the

rule to prevent vandalism are elements of good engineering practice in most facilities, including mobile facilities. Where they are not a part of good engineering practice, we allow deviations (see §112.7(a)(2)).

- Fences: Fencing helps to deter vandals and thus prevent the discharges that they might cause. When a fence is used to protect a facility, the design of the fence should deter vandalism. Methods of deterring vandals might include barbed wire or other devices. If any type of fence is impractical, an owner or operator may, under §112.7(a)(2), explain the reasons for nonconformance and provide equivalent environmental protection by some other means.

- Valves: Owners and operators must ensure that the master flow and drain valves and other valves permitting outward flow of the container's contents have adequate security measures. The old rule required that such valves be securely locked in the closed position when in non-operating or non-standby status. The revised rule allows security measures other than locking drain valves or other valves permitting outflow to the surface. Manual locks may be preferable for valves that are not electronically or automatically controlled. Such locks may be the only practical way to ensure that valves stay in the closed position. For electronically controlled or automated systems, no manual lock may be necessary. The rule gives an owner or operator discretion in the method of securing valves. Such flexibility allows for changes in technology and in the use of manual and electronic valving.

- Starter controls on pumps: In addition to requiring starter controls to be locked in the off position, the rule requires that the pumps be accessible only to authorized personnel. Restricting access prevents unauthorized personnel from accidentally opening the starter control. These measures are necessary to prevent discharges at small as well as large facilities – the threat of discharge is the same regardless of the size of the container, and a small discharge may be harmful to the environment. If the potential for losing keys, weather conditions such as frequent freezing, or other engineering factors render such a measure infeasible, an owner or operator may use the deviation

provisions in §112.7(a)(2) if he can explain his reasons for nonconformance and provide equivalent environmental protection by some other means.

- Loading/unloading connections: Under §112.7(g)(4), the revised rule continues to refer to "an extended time," instead of specifying a time line (e.g., six months), due to the need for operational flexibility at facilities. We define "an extended time" in reference to industry standards or, in the absence of such standards, at a frequency sufficient to prevent any discharge. The appropriate method of securing or blank flanging of these connections is a matter of good engineering practice, and might include "quick disconnect fittings" as a possible deviation under §112.7(a)(2). In any case, a secure cap is one equipped with some kind of lock or secure closure device to prevent vandalism. The requirements of this paragraph apply to the owner or operator of the piping, rather than to the owner or operator of the facility, because a facility might place only some piping out of service for a period of time, and let other piping remain in service. Otherwise, the owners or operators of some piping might escape the requirements of the rule and be more likely to discharge oil.

- Industry standards: Industry standards that may assist an owner or operator with security purposes include: (1) API Standard 2610, Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities; and, (2) NFPA 30A, Automotive and Marine Service Station Code, Flammable and Combustible Liquids Code.

Revised Rule	Old Rule
Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (h) Facility tank car and tank truck loading/unloading rack (*excluding offshore facilities*). *(1)* Where *loading/unloading area drainage* does not flow into a catchment basin or treatment facility designed to handle *discharges, use* a quick drainage system for *tank car or* tank truck loading and unloading areas. *You must design any containment system* to hold at least *the* maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded at the *facility*. (2) *Provide* an interlocked warning light or physical barrier system, *warning signs, wheel chocks, or vehicle brake interlock system* in loading/unloading areas to prevent *vehicles from departing* before complete disconnection of flexible or fixed oil transfer lines. (3) Prior to filling and departure of any tank car or tank truck, *closely inspect for discharges the lowermost drain and all outlets of such vehicles*, and if necessary, *ensure that they are* tightened, adjusted, or replaced to prevent liquid *discharge* while in transit.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (4) Facility tank car and tank truck loading/unloading rack (onshore). (i) Tank car and tank truck loading/unloading procedures should meet the minimum requirements and regulation established by the Department of Transportation. (ii) Where rack area drainage does not flow into a catchment basin or treatment facility designed to handle spills, a quick drainage system should be used for tank truck loading and unloading areas. The containment system should be designed to hold at least maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded in the plant. (iii) An interlocked warning light or physical barrier system, or warning signs, should be provided in loading/unloading areas to prevent vehicular departure before complete disconnect of flexible or fixed transfer lines. (iv) Prior to filling and departure of any tank car or tank truck, the lowermost drain and all outlets of such vehicles should be closely examined for leakage, and if necessary, tightened, adjusted, or replaced to prevent liquid leakage while in transit. . . . . . .

Notes

- Background: This section applies to any non-transportation-related or terminal facility where oil is loaded or unloaded from or to a tank car or tank truck. It applies to containers that are aboveground (including partially buried tanks, bunkered tanks, or vaulted tanks) or completely buried (except those exempted by this rule), and to all facilities, large or small. All such facilities have a risk of discharge from transfers. Our Survey of Oil Storage Facilities (published in July 1996) showed that as annual throughput increases, so does the propensity to discharge, the severity of the discharge, and, to a lesser extent, the costs of the cleanup. Throughput increases

are often associated with transfers of oil.

The requirements contained in this section, including those for secondary containment, warning systems, and inspection of trucks or cars for discharges are necessary to help prevent discharges. If an owner or operator can justify a deviation for secondary containment requirement in paragraph (h)(1) on the basis that it is not practicable from an engineering standpoint, he must provide a contingency plan and take other actions to comply with §112.7(d). If an owner or operator seeks to deviate from any of the requirements in paragraphs (h)(2) or (3), he must explain his reasons for nonconformance, as provided in §112.7(a)(2), and provide measures affording equivalent environmental protection.

A contingency plan (whether labeled "strong" or otherwise) is not a preferable alternative to secondary containment. Secondary containment is preferable because it may prevent a discharge that may be harmful as described in §112.1(b). A contingency plan is a plan for action when such discharge has already occurred. If secondary containment is not practicable, an owner or operator must provide a contingency plan and take other actions as required by §112.7(d). EPA will continue to evaluate the issue of whether the provisions for secondary containment found in §112.7(h)(1) should be modified or revised. We intend to publish a notice asking for additional data and comment on this issue.

This section does not regulate activities already under the purview of the U.S. Department of Transportation. We regulate the environmental aspects of loading/unloading transfers at non-transportation-related facilities, which are legitimately part of a prevention plan. DOT regulates other aspects of those transfers, such as safety measures.

- Secondary containment: The requirement for secondary containment applies to all facilities, whether with aboveground or completely buried containers. This includes production facilities and small facilities. The method of secondary containment must be one of those listed in the rule (see §112.7(c)), or some similar system that

provides equivalent environmental protection. The choice of method is one of good engineering practice. However, we note that sumps and drip pans are a listed method of secondary containment for offshore facilities. A catchment basin might be an acceptable form of retention pond for an onshore facility. Whatever method is implemented, it must be capable of containing the maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded in the facility. A discharge from the maximum capacity of any single compartment of a tank car or tank truck includes a discharge from the tank car or tank truck piping and hoses. This is the largest amount likely to be discharged from the oil storage vehicle. In case of discharge, the secondary containment system must be capable of preventing a discharge from that maximum capacity compartment to the environment. If secondary containment is not practicable, an owner or operator may be able to deviate from the requirement if he provides a contingency plan and otherwise comply with §112.7(d).

- Alarm or warning systems: The requirement to provide a warning light or other physical barrier system applies to the loading/unloading areas of facilities. We have amended the rule to include "vehicle brake interlock system" and "wheel chocks." The examples listed in the rule of potential warning systems are merely illustrative. Any other alarm or warning system which serves the same purpose and performs effectively will also suffice to meet this requirement.

- Vehicle drain closure: We believe that the requirement to check vehicles for discharge is important to help prevent discharges. If the check were not done, the entire contents of the vehicle might be discharged. We further believe that the responsibility for compliance with proposed §112.7(h)(3), as well as with all provisions of the rule, continues to rest with the owner or operator of the facility when those vehicles are loading or unloading oil at the facility.

- Industry standards: Industry standards that may assist an owner or operator with loading and unloading areas include: (1) NFPA 30, "Flammable and Combustible Liquids Code";

and, (2) API Standard 2610, "Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities."

Revised Rule	Old Rule
Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (i) **If a field-constructed aboveground container undergoes a repair, alteration, reconstruction, or a change in service that might affect the risk of a discharge or failure due to brittle fracture or other catastrophe, or has discharged oil or failed due to brittle fracture failure or other catastrophe, evaluate the container for risk of discharge or failure due to brittle fracture or other catastrophe, and as necessary, take appropriate action.**	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . [No direct counterpart in old rule.]

Notes

- Background: The brittle fracture requirement was triggered by the Ashland Oil tank collapse in 1988 due to brittle fracture.

- Applicability: The requirement to evaluate field-constructed tanks for brittle fracture whenever a field-constructed aboveground container undergoes repair, alteration, reconstruction, or change in service is necessary because brittle fracture may cause sudden and catastrophic tank failure, resulting in potentially serious damage to the environment and loss of oil. The requirement is applicable to large and small facilities alike, because all the field-constructed aboveground containers have a risk of failure. The presence or absence of secondary containment does not eliminate the need for brittle fracture evaluation because the intent of the rule is to prevent a discharge whether or not it will be contained. While the requirement applies to all field-constructed aboveground containers, if an owner or operator can show that the evaluation is unnecessary for his steel-bolted tanks, he may deviate from the requirement under §112.7(a)(2) if he can explain his reasons for nonconformance and provide equivalent environmental protection. We note that portions of steel-bolted tanks, such as the bottom or roof, may be welded, and therefore subject to brittle

fracture.

The requirement for evaluation of a field-constructed aboveground container must be undertaken when the container undergoes a repair, alteration, reconstruction, or change in service that might affect the risk of a discharge or failure due to brittle fracture, or when a discharge or failure has already occurred due to brittle fracture or other catastrophe. Catastrophic failures are failures which may result from events such as lightning strikes, dangerous seismic activity, etc. As a result of a catastrophic failure, the entire contents of a container may be discharged to the environment in the same way as if brittle fracture had occurred.

"Repair" means any work necessary to maintain or restore a container to a condition suitable for safe operation. Typical examples include the removal and replacement of material (such as roof, shell, or bottom material, including weld metal) to maintain container integrity; the re-leveling or jacking of a container shell, bottom, or roof; the addition of reinforcing plates to existing shell penetrations; and the repair of flaws, such as tears or gouges, by grinding or gouging followed by welding. We understand that some repairs (such as repair of tank seals), alterations, or changes in service will not cause a risk of failure due to brittle fracture; therefore, we have amended the rule to refer to those repairs, alterations, reconstruction, or changes in service that affect the risk of a discharge or failure due to brittle fracture.

"Alteration" means any work on a container involving cutting, burning, welding, or heating operations that changes the physical dimensions or configurations of the container. Typical examples include the addition of manways and nozzles greater than 12-inch nominal pipe size and an increase or decrease in tank shell height.

- Alternatives to brittle fracture evaluation: We believe that API Standard 653 is an acceptable standard to test for brittle fracture. However, an incorporation by reference of any standard might cause the rule to be instantly obsolete should that standard change or should a newer, better method emerge. A potential standard might also apply

only to a certain subset of facilities or equipment. Therefore, as with most other requirements in this part, if an owner or operator explains his reasons for nonconformance, alternative methods which afford equivalent environmental protection may be acceptable under §112.7(a)(2). If acoustic emission testing provides equivalent environmental protection it may be acceptable as an alternative. That decision, in the first instance, is one for the Professional Engineer and owner or operator.

- Industry standards: Industry standards that may assist an owner or operator with brittle fracture evaluation include: (1) API Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction"; and, (2) API Recommended Practice 920, "Prevention of Brittle Fracture of Pressure Vessels."

Revised Rule	Old Rule
Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (j) In addition to the minimal prevention standards listed under *this section, include in your Plan* a complete discussion of conformance with the applicable *requirements and other effective discharge prevention and containment procedures listed in this part or any applicable more stringent State rules, regulations, and guidelines.*	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) In addition to the minimal prevention standards listed under Sec. 112.7(c), sections of the Plan should include a complete discussion of conformance with the following applicable guidelines, other effective spill prevention and containment procedures (or, if more stringent, with State rules, regulations and guidelines): . . . . . .

Notes

- Cross-referencing of requirements: An owner or operator must address all SPCC requirements in the Plan, including requirements he considers inapplicable. The owner or operator must include in the Plan a complete discussion of conformance with the applicable requirements and other effective discharge prevention and containment procedures listed in part 112 or any applicable more stringent State rule, regulation, or guideline. If a requirement is not applicable to a particular type of facility, we believe that it is important for an owner or operator to explain why.

- Consistency in rules: An owner or operator may now use a State plan as a substitute for an SPCC Plan when the State plan meets all Federal requirements and is cross-referenced. When an owner or operator uses a State plan that does not meet all Federal requirements, it must be supplemented by sections that do meet all Federal requirements. At times EPA will have rules that are more stringent than States rules, and some States may have rules that are more stringent than those of EPA. If an owner or operator is following more stringent State rules in the Plan, he must explain that is what he is doing.

- Federal and State regulation: Both the States and EPA have authority to regulate containers storing or using oil. We believe State authority to regulate in this area and establish spill prevention programs is supported by section 311(o) of the CWA. Some States have exercised their authority to regulate while others have not. We believe that State SPCC programs are a valuable supplement to our SPCC program.

- Preemption: We do not preempt State rules, and defer to State rules, regulations, and guidelines that are more stringent than part 112.

SPCC RULE TEXT COMPARISON

SUBPART B

Revised Rule	Old Rule
3. Part 112 is amended adding subpart B consisting of §§112.8 through 112.11 to read as follows: *SUBPART B - Requirements for Petroleum Oils and Non-petroleum Oils, Except Animal Fats and Oils and Greases, and Fish and Marine Mammal Oils; and Vegetable Oils (Including Oils from Seeds, Nuts, Fruits, and Kernels).* *Sec.* *112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities).* *112.9 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities.* *112.10 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil drilling and workover facilities.* *112.11 Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities.*	[No direct counterpart in old rule.]

Notes

- Reorganization: We reorganized the rule to clarify SPCC Plan requirements for different types of facilities, and to provide requirements for different types of oil. Subpart A consists of an applicability section, definitions, and general requirements for all facilities. Subparts B and C outline the requirements for different types of oils. Subpart B is for petroleum oils and non-petroleum oils, except for animal fats and vegetable oils. Subpart C is for animal fats and oils and greases, and fish and marine mammal oils; and for vegetable oils, including oils from seeds, nuts, fruits, and kernels. Subpart D is for response. Subparts B and C are divided into sections to reflect the differing types of facilities for each type of oil. Subpart D is for response requirements.

SPCC RULE TEXT COMPARISON

SECTION 112.8

Revised Rule	Old Rule
Sec.112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities). *If you are the owner or operator of an onshore facility (excluding a production facility), you must:* *(a) Meet the general requirements for the Plan listed under §112.7, and the specific discharge prevention and containment procedures listed in this section.*	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) In addition to the minimal prevention standards listed under Sec. 112.7(c), sections of the Plan should include a complete discussion of conformance with the following applicable guidelines, other effective spill prevention and containment procedures (or, if more stringent, with State rules, regulations and guidelines): . . . . .

Notes

- Editorial changes: We inserted an introduction to §112.8 so that we could list the requirements of that section in the active voice. Those requirements, except as specifically noted, apply to the owner or operator of an onshore facility (except a production facility). The introduction does not result in any substantive change in requirements.

  Section 112.8(a) merely references the general requirements that all facilities subject to this part must meet and the specific requirements that facilities subject to this section must meet. It does not result in any change to substantive requirements.

Revised Rule	Old Rule
Sec.112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities). . . . . . . (b) *Facility drainage*. (1) *Restrain drainage from diked storage areas* by *valves to* prevent a *discharge* into the drainage system or *facility effluent treatment system*, except where *facility* systems are designed to control such discharge. *You may empty diked areas by pumps or ejectors;* however, *you must* manually *activate these pumps or ejectors and must inspect the* condition of the accumulation before starting, to ensure no oil will be *discharged.* (2) *Use valves of manual, open-and-closed design, for the drainage of diked areas*. *You may not use flapper-type drain valves to drain diked areas. If your facility drainage drains directly into a* watercourse and not into *an on-site* wastewater treatment *plant, you must inspect and may drain uncontaminated retained stormwater, as provided in paragraphs (c)(3)(ii), (iii), and (iv) of this section.*	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (1) Facility drainage (onshore); (excluding production facilities). (i) Drainage from diked storage areas should be restrained by valves or other positive means to prevent a spill or other excessive leakage of oil into the drainage system or inplant effluent treatment system, except where plan systems are designed to handle such leakage. Diked areas may be emptied by pumps or ejectors; however, these should be manually activated and the condition of the accumulation should be examined before starting to be sure no oil will be discharged into the water. (ii) Flapper-type drain valves should not be used to drain diked areas. Valves used for the drainage of diked areas should, as far as practical, be of manual, open-and-closed design. When plant drainage drains directly into water courses and not into wastewater treatment plants, retained storm water should be inspected as provided in paragraphs (e)(2)(iii) (B), (C) and (D) of this section before drainage. . . . . . .

Notes

- Applicability: This section is not limited to facilities having areas with the potential for discharges greater than 660 gallons or areas with tanks regulated under these rules. Small discharges (that is, of 660 gallons or less) as described in §112.1(b) from diked storage areas can cause great environmental harm. Also, this rule applies to *regulated facilities*, not merely areas with regulated tanks or other containers. A facility may contain operating equipment within a diked storage area that could cause a discharge as described in §112.1(b).

  The requirement is practical for facilities with site-wide containment or that have substantial stormwater draining onto and across the site.

Where oil/water separators, underflow uncontrolled discharge devices, or other positive means provide equivalent environmental protection as the discharge restraints required by this section, an owner or operator may use them, if he explains his reasons for nonconformance. See §112.7(a)(2). However, the owner or operator must still ensure that no oil will be discharged when using alternate devices.

- De minimis amounts of oil: This rule is concerned with a discharge of oil that would become a discharge as described in §112.1(b). When oil is present in water in an amount that cannot be perceived by the human eye, the discharge might not meet the description provided in 40 CFR 110.3. Therefore, such a discharge might not be a discharge in a quantity that may be harmful, and therefore not a reportable discharge under part 110. However, a discharge which is invisible to the human eye might also contain components (for example, dissolved petroleum components) which would violate applicable water quality standards, making it a reportable discharge. Therefore, we are keeping the language as proposed, other than making some editorial changes.

- Industry standards: Industry standards that may assist an owner or operator with facility drainage include: (1) NFPA 30, "Flammable and Combustible Liquids Code"; and (2), API Standard 2610, "Design, Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities."

- Innovative devices: This rule does not preclude innovative devices that achieve the same environmental protection as manual open-and-closed design valves. If an owner or operator does not use such valves, he must explain why. The provision for deviations in §112.7(a)(2) allows alternatives if the owner or operator states his reasons for nonconformance, and if he can provide equivalent environmental protection by some other means. However, the owner or operator may not use flapper-type drain valves to drain diked areas. And if the owner or operator uses alternate devices to substitute for manual, open-and-closed design valves, the owner or operator must inspect and may drain retained stormwater, as provided in

§112.8(c)(3)(ii), (iii), and (iv), if their facility drainage drains directly into a watercourse, lake, or pond bypassing the facility treatment system.

Revised Rule	Old Rule
Sec.112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities). . . . . . . (b) . . . (3) *Design facility drainage systems from undiked areas with a potential for a discharge (such as where piping is located outside containment walls or where tank truck discharges may occur outside the loading area) to* flow into ponds, lagoons, or catchment basins designed to retain oil or return it to the facility. *You must not locate catchment basins* in areas subject to periodic flooding. (4) If *facility* drainage is not engineered as *in paragraph (b)(3) of this section, equip the final discharge of all ditches inside the facility* with a diversion system that would, in the event of an uncontrolled *discharge, retain oil in the facility.* (5) Where drainage waters are treated in more than one treatment unit *and such treatment is continuous, and pump transfer is needed, provide two "lift" pumps and permanently install at least one of the pumps*. Whatever techniques *you use, you must engineer* facility drainage systems to prevent *a discharge as described in §112.1(b) in case there is an* equipment failure or human error at the facility.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (1) . . . (iii) Plant drainage systems from undiked areas should, if possible, flow into ponds, lagoons or catchment basins, designed to retain oil or return it to the facility. Catchment basins should not be located in areas subject to periodic flooding. (iv) If plant drainage is not engineered as above, the final discharge of all in-plant ditches should be equipped with a diversion system that could, in the event of an uncontrolled spill, return the oil to the plant. (v) Where drainage waters are treated in more than one treatment unit, natural hydraulic flow should be used. If pump transfer is needed, two "lift" pumps should be provided, and at least one of the pumps should be permanently installed when such treatment is continuous. In any event, whatever techniques are used facility drainage systems should be adequately engineered to prevent oil from reaching navigable waters in the event of equipment failure or human error at the facility. . . . . . .

Notes

- Applicability: Where a drainage system is infeasible, if an owner or operator explains his reasons for nonconformance, he may provide equivalent environmental protection by an alternate means. Concerning the applicability of the paragraph to aboveground piping and loading/unloading areas, we note that both areas are subject to the rule's requirements if they are undiked.

- Alternatives: The rule does not limit an owner or operator to the use of drainage trenches for undiked areas. Other forms of secondary containment may be acceptable. The rule only prescribes requirements for the drainage of diked

areas, but does not mandate the use of diked areas. If the owner or operator does use diked areas, the rule prescribes minimum requirements for drainage of those areas. Also, if the requirement is not practical, an owner or operator may explain his reasons for nonconformance and provide equivalent environmental protection under §112.7(a)(2).

- Retaining oil in the facility: The rule requires retaining within the facility minimal amounts of contaminated water in undiked areas subject to periodic flooding. It is better that a diversion system retain rather than allow oil to leave the facility, thus enhancing the prevention goals of the rule. Furthermore, it should be easier to retain discharged oil rather than retrieve oil that has been discharged from the facility.

Revised Rule	Old Rule
Sec.112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities). . . . . . . (c) *Bulk storage containers.* (1) *Not use a container* for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and *temperature.*	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (2) Bulk storage tanks (onshore); (excluding production facilities). (i) No tank should be used for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature, etc. . . . . .

Notes

- Industry standards: Industry standards that may assist an owner or operator with the material and construction of containers include: (1) API Standard 620, "Design and Construction of Large Welded Low-Pressure Storage Tanks"; (2) API Standard 650, "Welded Steel Tanks for Oil Storage"; (3) Steel Tank Institute (STI) F911, "Standard for Diked Aboveground Steel Tanks"; (4) STI Publication R931, "Double Wall Aboveground Storage Tank Installation and Testing Instruction"; (5) UL Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids"; (6) UL Standard 142, "Steel Aboveground Tanks for Flammable and Combustible Liquids"; (7) UL Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; and, (8) Petroleum Equipment Institute (PEI) Recommended Practice 200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling."

Revised Rule	Old Rule
Sec.112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities). . . . . . . (c) . . . (2) *Construct* all bulk storage *container installations so that you provide* a secondary means of containment *for the entire capacity of the largest single container and* sufficient freeboard *to contain precipitation*. *You must 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.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (2) . . . (ii) All bulk storage tank installations should be constructed so that a secondary means of containment is provided for the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation. Diked areas should be sufficiently impervious to contain spilled oil. Dikes, containment curbs, and pits are commonly employed for this purpose, but they may not always be appropriate. An alternative system could consist of a complete drainage trench enclosure arranged so that a spill could terminate and be safely confined in an in-plant catchment basin or holding pond. . . . . . .

Notes

- Secondary containment - in general: A primary containment system is the container or equipment in which oil is stored or used. Secondary containment is a requirement, whenever practicable, for all bulk storage facilities, large or small, manned or unmanned; and for facilities that use oil-filled equipment. Such containment must at least provide for the capacity of the largest single tank with sufficient freeboard for precipitation. A discharge as described in §112.1(b) from a small facility may be as environmentally devastating as such a discharge from a large facility, depending on the surrounding environment. Likewise, a discharge from a manned facility needs to be contained just as a discharge from an unmanned one. Secondary containment was already required under old rules. When secondary containment is not practicable, the owner or operator of a facility may deviate from the requirement under §112.7(d), explain the rationale in the Plan, provide a contingency plan following the provisions of 40 CFR part 109, and otherwise comply with §112.7(d).

Because a pit used as a form of secondary containment may pose a threat to birds and wildlife, we encourage an owner or operator who uses a pit to take measures to mitigate the effect of the pit on birds and wildlife. Such measures may include netting, fences, or other means to keep birds or animals away. In some cases, pits may also cause a discharge as described in §112.1(b). A discharge may occur when oil spills over the top of the pit or when oil seeps through the ground into groundwater, and thence to navigable waters or adjoining shorelines. Therefore, we recommend that an owner or operator not use pits in an area where such pit may prove a source of such discharges. Should the oil reach navigable waters or adjoining shorelines, it is a reportable discharge under 40 CFR 110.6.

- Relationship with NPDES requirements: We do not believe that the rule is duplicative of NPDES rules. Forseeable or chronic point source discharges that are permitted under CWA section 402, and that are either due to causes associated with the manufacturing or other commercial activities in which the discharger is engaged or due to the operation of treatment facilities required by the NPDES permit, are to be regulated under the NPDES program. "Classic spill" situations are subject to the requirements of CWA section 311. Such spills are governed by section 311 even where the discharger holds a valid and effective NPDES permit under section 402. 52 FR 10712, 10714. Therefore, the typical bulk storage facility with no permitted discharge or treatment facility would not be under the NPDES rules.

  The secondary containment requirements of the rule apply to bulk storage containers and their purpose is to help prevent discharges as described in §112.1(b) by containing discharged oil. NPDES rules, on the other hand, may at times require secondary containment, but do not always. Furthermore, NPDES rules may not always apply to bulk storage facilities. Therefore, the rule is not always duplicative of NPDES rules. Where it is duplicative, an owner or operator of a facility subject to NPDES rules may use that portion of his Best Management Practice Plan as part of his SPCC Plan.

- Sufficient freeboard: An essential part of secondary containment is sufficient freeboard to contain precipitation. Whatever method the owner or operator uses to calculate the amount of freeboard that is "sufficient" must be documented in the Plan. We believe that the proper standard of "sufficient freeboard" to contain precipitation is that amount necessary to contain precipitation from a 25-year, 24-hour storm event. That standard allows flexibility for varying climatic conditions. It is also the standard required for certain tank systems storing or treating hazardous waste. See, for example, 40 CFR 265.1(e)(1)(ii) and (e)(2)(ii). While we believe that 25-year, 24-hour storm event standard is appropriate for most facilities and protective of the environment, we are not making it a rule standard because of the current difficulty and expense for some facilities of securing recent information concerning such storm events. Recent data does not exist for all areas of the United States. Furthermore, available data may be costly for small operators to secure. Should recent and inexpensive information concerning a 25-year, 24-hour storm event for any part of the United States become easily accessible, we will reconsider proposing such a standard.

- Industry standards: Industry standards that may assist an owner or operator with secondary containment for bulk storage containers include: (1) NFPA 30, "Flammable and Combustible Liquids Code"; (2) BOCA, National Fire Prevention Code; (3) API Standard 2610, "Design Construction, Operation, Maintenance, and Inspection of Terminal and Tank Facilities"; and, (4) Petroleum Equipment Institute Recommended Practice 200, "Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling."

Revised Rule	Old Rule
Sec.112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities). . . . . . . (c) . . . (3) *Not allow* drainage of *uncontaminated* rainwater from the diked area into a storm drain or *discharge of an effluent into an* open watercourse, lake, or pond, bypassing the *facility* treatment system *unless you*: (i) *Normally keep the bypass valve* sealed closed. (ii) *Inspect the retained rainwater to ensure that its presence will not cause a discharge as described in §112.1(b).* (iii) *Open the bypass valve and reseal it* following drainage under responsible supervision; *and* (iv) *Keep adequate records of such events, for example, any records required under permits issued in accordance with §§122.41(j)(2) and 122.41(m)(3) of this chapter*.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (iii) Drainage of rainwater from the diked area into a storm drain or an effluent discharge that empties into an open water course, lake, or pond, and bypassing the in-plant treatment system may be acceptable if: (A) The bypass valve is normally sealed closed. (B) Inspection of the run-off rain water ensures compliance with applicable water quality standards and will not cause a harmful discharge as defined in 40 CFR part 110. (C) The bypass valve is opened, and resealed following drainage under responsible supervision. (D) Adequate records are kept of such events. . . . . .

Notes

- Relationship with NPDES requirements: The rule allows an owner or operator may, if he chooses, to use NPDES stormwater discharge records in lieu of records specifically created for SPCC purposes. The NPDES requirements are not incorporated into the revised rule by reference.

  This paragraph applies to discharges of rainwater from diked areas that may contain any type of oil, including animal fats and vegetable oils. The only purpose of this paragraph is to offer a recordkeeping option so that the owner or operator does not have to create a duplicate set of records for SPCC purposes, when adequate records created for NPDES purposes already exist.

Revised Rule	Old Rule
Sec.112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities). . . . . . . (c) . . . (4) *Protect any completely* buried metallic storage *tank installed on or after January 10, 1974* from corrosion by coatings *or* cathodic *protection compatible* with local soil conditions. *You must regularly leak test such completely buried metallic storage tanks*. (5) *Not use* partially buried *or bunkered* metallic tanks for the storage of oil, unless *you protect* the buried section *of the tank from corrosion*. *You must protect partially buried and bunkered tanks from corrosion by coatings or cathodic protection compatible with local soil conditions.*	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (2) . . . (iv) Buried metallic storage tanks represent a potential for undetected spills. A new buried installation should be protected from corrosion by coatings, cathodic protection or other effective methods compatible with local soil conditions. Such buried tanks should at least be subjected to regular pressure testing. (v) Partially buried metallic tanks for the storage of oil should be avoided, unless the buried section of the shell is adequately coated, since partial burial in damp earth can cause rapid corrosion of metallic surfaces, especially at the earth/air interface. . . . . . .

Notes

- Corrosion protection: Although we believe that all completely buried tanks should have some type of corrosion protection, we only extend that requirement to new completely buried metallic storage tanks. Because corrosion protection is a feature of the old rule (see §112.7(e)(2)(iv)), the requirement applies to completely buried metallic tanks installed on or after January 10, 1974. The requirement is enforceable because it is a procedure or method to prevent the discharge of oil. See §311(j)(1)(C) of the CWA. Most owners or operators of completely buried storage tanks will be exempted from part 112 under this rule because such tanks are subject to all of the technical requirements of 40 CFR part 280 or a State program approved under 40 CFR part 281. Those tanks subject to 40 CFR part 280 or a State program approved under 40 CFR part 281 will follow the corrosion protection provisions of that rule, which provides comparable environmental protection. Those that remain subject to the SPCC regulation must comply with this paragraph.

  The rule requires corrosion protection for

completely buried metallic tanks by a method compatible with local soil conditions. Local soil conditions might include fill material. The method of such corrosion protection is a question of good engineering practice, which will vary from facility to facility. The owner or operator should monitor such corrosion protection for effectiveness, in order to be sure that the chosen method of protection remains protective. See §112.8(d)(1) for information on corrosion protection for buried piping.

- Leak testing: The old SPCC rule contained a provision calling for the "regular pressure testing" of buried metallic storage tanks. The revised rule requires that such buried tanks be subject to regular "leak testing." Leak testing for purposes of this paragraph is testing to ensure liquid tightness of a container and whether it may discharge oil. We specify leak testing, instead of pressure testing, in order to be consistent with many State regulations and because the technology on such testing was rapidly evolving. Leak testing is mandatory because recommendations may not often be followed. Appropriate methods of testing should be selected based on good engineering practice. Whatever method and schedule for testing the PE selects must be described in the Plan. Testing under the standards set out in 40 CFR part 280 or a State program approved under 40 CFR part 281 is certainly acceptable (as we suggested in the proposed rule). "Regular testing" means testing in accordance with industry standards or at a frequency sufficient to prevent leaks.

- Requirement v. recommendation: Due to the risk of discharge caused by corrosion, the revised rule retains the old requirement to not use partially buried metallic tanks, unless the buried section of such tanks are protected from corrosion. The requirement to not use such tanks, unless they are protected from corrosion, applies to all partially buried metallic tanks, installed at any time.

Revised Rule	Old Rule
Sec.112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities). . . . . . . (c)(6) *Test each aboveground container for integrity on a regular schedule, and whenever you make material repairs. The frequency of and type of testing must take into account container size and design (such as floating roof, skid-mounted, elevated, or partially buried). You* **must combine** *visual inspection with another testing technique such as* hydrostatic testing*, radiographic testing, ultrasonic testing, acoustic emissions testing, or another system of non-destructive shell 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 will suffice for purposes of this paragraph*.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e)(2)(vi) Aboveground tanks should be subject to periodic integrity testing, taking into account tank design (floating roof, etc.) and using such techniques as hydrostatic testing, visual inspection or a system of non-destructive shell thickness testing. Comparison records should be kept where appropriate, and tank supports and foundations should be included in these inspections. In addition, the outside of the tank should frequently be observed by operating personnel for signs of deterioration, leaks which might cause a spill, or accumulation of oil inside diked areas. . . . . . .

Notes

- <u>10-year integrity testing, in general</u>: Integrity testing is a necessary component of any good prevention plan. The revised rule continues to emphasize adherence to industry standards, rather than prescribing a particular period for testing. Industry standards may at times be more specific and more stringent than the rule. For example, API Standard 653 provides specific criteria for internal inspection frequencies based on the calculated corrosion rate, rather than an arbitrary time period. API Standard 653 allows the aboveground storage tank (AST) owner or operator the flexibility to implement a number of options to identify and prevent problems that ultimately lead to a loss of tank integrity. It establishes a minimum and maximum interval between internal inspections. It requires an internal AST inspection when the estimated corrosion rate indicates the bottom will have

corroded to 0.1 inches. Certain prevention measures taken to prevent a discharge from the tank bottom may affect this action level (thickness). Once this point has been reached, the owner or operator has to make a decision, depending on the future service and operating environment of the tank, to either replace the whole tank, line the bottom, add cathodic protection, replace the tank bottom with a new bottom, add a release prevention barrier, or some combination of the above.

Another benefit from the use of industry standards is that they specify when and where specific tests may and may not be used. For example, API Standard 653 is very specific as to when radiographic tests may be used and when a full hydrostatic test is required after shell repairs. Depending on shell material toughness and thickness a full hydrotest is required for certain shell repairs. Allowing a visual inspection in these cases risks a tank failure similar to the 1988 Floreffe, Pennsylvania event. Testing on a "regular schedule" means testing per industry standards or at a frequency sufficient to prevent discharges. Whatever schedule the PE selects must be documented in the Plan.

- Applicability of integrity testing: Integrity testing is essential for all aboveground containers, to help prevent discharges. Testing will show whether corrosion has reached a point where repairs or replacement of the container is needed. Prevention of discharges is preferable to cleaning them up afterwards. Integrity testing applies to large and small containers, containers on and off the ground wherever located, and to containers storing any type of oil. From all of these containers there exists the possibility of discharge.

  Because electrical, operating, and manufacturing equipment are not bulk storage containers, the requirement is inapplicable to those devices or equipment. Also, methods may not exist for integrity testing of such devices or equipment.

- Material repairs: The rationale for testing at the time material repairs are conducted is that such repairs could materially increase the potential for oil to be discharged from the tank. Examples of

such repairs include removing or replacing the annular plate ring; replacement of the container bottom; jacking of a container shell; installation of a 12-inch or larger nozzle in the shell; a door sheet, tombstone replacement in the shell, or other shell repair; or, such repairs that might materially change the potential for oil to be discharged from the container.

- Method of testing: The rule requires visual testing in conjunction with another method of testing, because visual testing alone is normally insufficient to measure the integrity of a container. Visual testing alone might not detect problems which could lead to container failure. For example, studies of the 1988 Ashland oil spill suggest that the tank collapse resulted from a brittle fracture in the shell of the tank. Adequate fracture toughness of the base metal of existing tanks is an important consideration in discharge prevention, especially in cold weather. Although no definitive non-destructive test exists for testing fracture toughness, had the tank been evaluated for brittle fracture, for example under API Standard 653, and had the evaluation shown that the tank was at risk for brittle fracture, the owner or operator could have taken measures to repair or modify the tank's operation to prevent failure.

  For certain smaller, shop-built containers in which internal corrosion poses minimal risk of failure; which are inspected at least monthly; and, for which all sides are visible (i.e., the container has no contact with the ground), visual inspection alone might suffice, subject to good engineering practice. In such case the owner or operator must explain in the Plan why visual integrity testing alone is sufficient, and provide equivalent environmental protection. Containers that are in contact with the ground must be evaluated for integrity in accordance with industry standards and good engineering practice.

- Business records: An owner or operator may use usual and customary business records, at his option, for purposes of integrity testing recordkeeping. Specifically, an owner or operator may use records maintained under API Standards 653 and 2610 for purposes of this section, if he chooses. Other usual and

customary business records, either existing or to be developed in the future, may also suffice. Or, an owner or operator may elect to keep separate records for SPCC purposes. This section requires an owner or operator to keep comparison records. Section 112.7(e) requires retention of these records for three years. We note, however, that certain industry standards (for example, API Standards 570 and 653) may specify that an owner or operator maintain records for longer than three years.

- Industry standards: Industry standards that may assist an owner or operator with integrity testing include: (1) API Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction"; (2) API Recommended Practice 575, "Inspection of Atmospheric and Low-Pressure Tanks;" and, (3) Steel Tank Institute Standard SP001-00, "Standard for Inspection of In-Service Shop Fabricated Aboveground Tanks for Storage of Combustible and Flammable Liquids."

Revised Rule	Old Rule
Sec.112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities). . . . . . . (c) . . . (7) *Control leakage through defective internal heating coils by monitoring the steam return and exhaust lines for contamination from internal heating coils that discharge into an open watercourse, or pass the steam return or exhaust lines through a settling tank, skimmer, or other separation or retention system.*	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (2) . . . (vii) To control leakage through defective internal heating coils, the following factors should be considered and applied, as appropriate. (A) The steam return or exhaust lines from internal heating coils which discharge into an open water course should be monitored for contamination, or passed through a settling tank, skimmer, or other separation or retention system. (B) The feasibility of installing an external heating system should also be considered. . . . . . .

Notes

- Flexibility: The rule does not mandate the use of any specific separation or retention system. Any system that achieves the purpose of the rule is acceptable. That purpose is to prevent discharges as described in §112.1(b) by controlling leakage.

Revised Rule	Old Rule
Sec.112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities). . . . . . . (c) . . . (8) *Engineer or update each container installation in accordance with good engineering practice to avoid discharges. You must provide at least* one of the following devices: (i) High liquid level alarms with an audible or visual signal at a constantly *attended* operation or surveillance station. In smaller facilities an audible air vent may suffice. *(ii) High* liquid level pump cutoff devices set to stop flow at a predetermined container content level. (iii) Direct audible or code signal communication between the *container* gauger and the pumping station. (iv) A fast response system for determining the liquid level of each bulk storage *container* such as digital computers, telepulse, or direct vision gauges. **If you use this alternative, a person must be present to monitor gauges and the overall filling of bulk storage containers.** (v) *You must regularly test* liquid level sensing *devices to ensure* proper operation.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (2) . . . (viii) New and old tank installations should, as far as practical, be fail-safe engineered or updated into a fail-safe engineered installation to avoid spills. Consideration should be given to providing one or more of the following devices: (A) High liquid level alarms with an audible or visual signal at a constantly manned operation or surveillance station; in smaller plants an audible air vent may suffice. (B) Considering size and complexity of the facility, high liquid level pump cutoff devices set to stop flow at a predetermined tank content level. (C) Direct audible or code signal communication between the tank gauger and the pumping station. (D) A fast response system for determining the liquid level of each bulk storage tank such as digital computers, telepulse, or direct vision gauges or their equivalent. (E) Liquid level sensing devices should be regularly tested to insure proper operation. . . . . .

Notes

- Applicability: Alarm system devices are necessary for all facilities, large or small, to prevent discharges. Such systems alert the owner or operator to potential container overfills, which are a common cause of discharges. This was also a requirement of the old rule.

- Monitoring: A person must be present to monitor a fast response system to prevent overfills and have amended the rule accordingly. The requirement for alarm devices still applies when a person is present, because human error, negligence, on inattention may still occur in those

cases, necessitating some kind of alarm device.

Alternatives: Under the deviation rule at §112.7(a)(2), an owner or operator may substitute "procedures" or other measures that provide equivalent environmental protection as any of the alarm systems mandated in the rule if he can explain their reasons for nonconformance.

- Industry standards: Industry standards that may assist an owner or operator with alarm systems, discharge prevention systems, and inventory control include: (1) NFPA 30, "Flammable and Combustible Liquids Code"; (2) API Recommended Practice 2350, "Overfill Protection for Storage Tanks in Petroleum Facilities"; and, (3) API, "Manual of Petroleum Measurement Standards."

Revised Rule	Old Rule
Sec.112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities). . . . . . . (c) . . . (9) *Observe effluent treatment facilities frequently enough to detect possible system upsets that could cause a discharge as described in §112.1(b).* (10) *Promptly correct visible discharges which result in a loss of oil from the container, including but not limited to seams*, gaskets, *piping, pumps, valves*, rivets, and bolts. *You must promptly remove any accumulations of oil in diked areas.*	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (2) . . . (ix) Plant effluents which are discharged into navigable waters should have disposal facilities observed frequently enough to detect possible system upsets that could cause an oil spill event. (x) Visible oil leaks which result in a loss of oil from tank seams, gaskets, rivets and bolts sufficiently large to cause the accumulation of oil in diked areas should be promptly corrected. . . . . . .

Notes

- Applicability: All facilities, large and small, are required to clean up an accumulation of oil. The damage to the environment may be the same, depending on the amount discharged.

- Extent of and methods of cleanup: Prevention of contamination is always the preferred option. If an owner or operator chooses, he may spread plastic film over the diked area if it will prevent the occurrence of an accumulation of oil. Of course, he must then dispose of the film properly. Where a discharge creates a risk of fire or explosion, the first priority should be to eliminate such threat before undertaking cleanup. But once that threat is removed, correction of the source of the discharge and cleanup must begin promptly. No matter what method of cleanup an owner or operator chooses, he must completely remove the accumulation of oil. Any method that works and complies with all other applicable laws and regulations is acceptable. Bioremediation may be one acceptable method of cleanup. Acceptable methods will depend on weather and other environmental conditions. We do not mean to limit cleanup methods, which will depend on good engineering practice. If the cleanup method the owner or operator chooses would undermine the stability of the dike, the owner or operator must repair the dike to its previous condition.

- Prompt removal: We have not adopted a specific time frame for "prompt removal" of accumulations of oil. Such a time frame could preclude bioremediation. Under certain circumstances, such a limit might also jeopardize worker health and safety. "Prompt" removal means beginning the cleanup of any accumulation of oil immediately after discovery of the discharge, or immediately after any actions to prevent fire or explosion or other threats to worker health and safety, but such actions may not be used to unreasonably delay such efforts. The size of the accumulation is irrelevant, as any accumulation may migrate to navigable waters or adjoining shorelines.

Revised Rule	Old Rule
Sec.112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities). . . . . . . (c) . . . (11) *Position or locate mobile or portable oil storage containers to prevent a discharge as described in §112.1(b). 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**.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (2) . . . (xi) Mobile or portable oil storage tanks (onshore) should be positioned or located so as to prevent spilled oil from reaching navigable waters. A secondary means of containment, such as dikes or catchment basins, should be furnished for the largest single compartment or tank. These facilities should be located where they will not be subject to periodic flooding or washout. . . . . . .

Notes

- Scope of discharge prevention: The purpose of the rule is to prevent discharges from becoming discharges as described in §112.1(b). Therefore, we modified the rule to require positioning or locating mobile or portable containers to prevent "a discharge as described in §112.1(b)," rather than "oil discharges." "A discharge as described in §112.1(b)" is a more inclusive term, tracking the expanded scope of the amended CWA.

- Time limits: We do not place a time limitation in the definition of mobile or portable containers. Mobile or portable containers may be in place for more than ten days and still be mobile. Mobile containers that are in place for less than 10 days may still experience a discharge as described in §112.1(b).

- Secondary containment: The revised rule maintains the secondary containment requirement, because secondary containment is necessary for mobile containers for the same reason that it is necessary for fixed containers; to prevent discharges from becoming discharges as described in §112.1(b). Secondary containment must also be designed so that there is ample freeboard for anticipated precipitation. We have therefore amended the rule to provide for freeboard. Freeboard sufficient to contain precipitation is freeboard according to industry standards, or in an amount that will avert a discharge as described in §112.1(b). Should secondary containment not be practicable, an owner or operator may be able to deviate from the requirement under §112.7(d).

  We clarify that the secondary containment requirement relates to the capacity of the largest single compartment or container. Permanently manifolded tanks are tanks that are designed, installed, or operated in such a manner that the multiple containers function as a single storage unit. Containers that are permanently manifolded together may count as the "largest single compartment," as referenced in the rule.

- Industry standards: Industry standards that may assist an owner or operator with secondary containment for mobile containers include: (1) NFPA 30, "Flammable and Combustible Liquids Code"; and, (2)

BOCA, "National Fire Prevention Code."

Revised Rule	Old Rule
Sec.112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities). . . . . . . (d) *Facility transfer operations, pumping, and facility process.* (1) *Provide buried piping that is installed* **or replaced on or after August 16, 2002** *with* a protective wrapping and coating. *You must also cathodically protect such buried piping installations* **or otherwise satisfy the corrosion protection standards for piping in part 280 of this chapter or a State program approved under part 281 of this chapter. If a section of buried line is exposed for any reason, you must carefully inspect it for deterioration.** If *you find corrosion damage, you must undertake* additional examination and corrective action as indicated by the magnitude of the damage.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (3)Facility transfer operations, pumping, and in-plant process (onshore); (excluding production facilities). (i) Buried piping installations should have a protective wrapping and coating and should be cathodically protected if soil conditions warrant. If a section of buried line is exposed for any reason, it should be carefully examined for deterioration. If corrosion damage is found, additional examination and corrective action should be taken as indicated by the magnitude of the damage. An alternative would be the more frequent use of exposed pipe corridors or galleries. . . . . . .

Notes

- Corrosion protection: Based on EPA experience, we believe that all soil conditions warrant protection of new and replaced buried piping. EPA's "cause of release" study indicates that the operational piping portion of an underground storage tank system is twice as likely as the tank portion to be the source of a discharge. Piping failures are caused equally by poor workmanship and corrosion. Metal areas made active by threading have a high propensity to corrode if not coated and cathodically protected. See 53 FR 37082, 37127, September 23, 1988; and "Causes of Release from US Systems," September 1987, EPA 510-R-92-702. If the owner or operator decides to deviate from the requirement, for example, to provide an alternate means of protection other than coating or cathodic protection, the owner or operator may do so, but must explain their reasons for nonconformance, and demonstrate that the owner or operator is providing equivalent environmental protection. A deviation which seeks to avoid coating or cathodic protection, or some alternate means of buried piping protection, on the grounds

that the soil is somehow incompatible with such measure(s), will not be acceptable to EPA.

A "new" or "replaced" buried piping installation is one that is installed 30 days or more after the date of publication of this rule in the Federal Register. Under the old rule, an owner or operator had an obligation to provide buried piping installations with protective wrapping and coating only if soil conditions warrant such measures. Under the revised rule, an owner or operator must provide such wrapping and coating for new or replaced buried piping installations regardless of soil conditions.

An owner or operator should consult a corrosion professional before design, installation, or repair of any corrosion protection system. Any corrosion protection should be installed according to relevant industry standards. When piping is replaced, the owner or operator must protect from corrosion only the replaced section, although protection of the entire line whenever possible is preferable. Equipping only a small portion of piping with corrosion protection may accelerate corrosion rates on connected unprotected piping. While corrosion protection might not prevent all discharges from buried piping, it is an important measure because it will help to prevent most discharges.

Double-walled piping or secondary containment or sensitive leak detection for buried piping may be acceptable as a deviation from the requirements of this paragraph under §112.7(a)(2), if the owner or operator explains the reasons for nonconformance with the requirement and shows that the means the owner or operator selected provides equivalent environmental protection to the requirement.

We note that some buried piping now subject to part 112 will be subject only to 40 CFR part 280 or a State program approved under 40 CFR part 281 under this rule. See §112.1(d)(4).

- Industry standards: Industry standards that may assist an owner or operator with corrosion protection for buried piping installations include: (1) National Association of Corrosion Engineers (NACE) Recommended Practice-0169, "Control

of External Corrosion on Underground or Submerged Metallic Piping Systems"; and, (2) STI Recommended Practice 892, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems."

Revised Rule	Old Rule
Sec.112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities). . . . . . . (d) . . . (2) *Cap or blank-flange the terminal connection at the transfer point and mark it as to origin when piping is not in service or is in standby service for an extended time.* (3) *Properly design pipe supports* to minimize abrasion and corrosion and allow for expansion and contraction.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (3) . . . (ii) When a pipeline is not in service, or in standby service for an extended time the terminal connection at the transfer point should be capped or blank-flanged, and marked as to origin. (iii) Pipe supports should be properly designed to minimize abrasion and corrosion and allow for expansion and contraction. . . . . .

Notes

- Extended time: The revised rule keeps a standard of requiring capping or blank-flanging terminal connections when such piping is not in service or is in standby for an extended time, in order to maintain flexibility for variable facilities and engineering conditions. We define "an extended time" in reference to industry standards or at a frequency sufficient to prevent discharges.

- Applicability: We believe that the requirement should apply to piping that is not in standby service because some discharges may be caused by loading or unloading oil through the wrong piping or turning the wrong valve when the piping in question was actually out-of-service. Typically, piping that is in standby service is only needed in emergency situations or when there is an operational problem. In the rare situations when such piping is needed immediately, the owner or operator may remove the cap or blank-flange to return the piping to service.

Revised Rule	Old Rule
Sec.112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities). . . . . . . (d) . . . (4) *Regularly inspect all aboveground valves, piping, and appurtenances. During the inspection you must assess the* general condition of items, such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces. **You must also conduct integrity and leak testing of buried piping at the time of installation, modification, construction, relocation, or replacement.**	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (3) . . . (iv) All aboveground valves and pipelines should be subjected to regular examinations by operating personnel at which time the general condition of items, such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces should be assessed. In addition, periodic pressure testing may be warranted for piping in areas where facility drainage is such that a failure might lead to a spill event. . . . . . .

Notes

- Monthly inspection of aboveground valves, piping, and appurtenances*:* The rule requires inspection of aboveground valves, piping, and appurtenances to help prevent discharges. Such valves, piping, and appurtenances often are located outside of secondary containment systems, and often do not have double-wall protection or some form of secondary containment themselves. Therefore, any discharge from such valves, piping, and appurtenances is more likely to become a discharge as described in §112.1(b). Examination of discharge reports from the Emergency Response Notification System (ERNS) shows that discharges from such valves, piping, and appurtenances are much more common than catastrophic tank failure or discharges from tanks. The requirement must be applicable to large and small facilities covered by this section, because they all pose the same threat of discharge.

  "Regular" inspections are inspections conducted "in accordance with accepted industry standards." An owner or operator must include appurtenances in the inspection. Inspections may be either visual or by other means, including pressure testing. However, we do not require pressure

testing or any other specific method. We believe that, subject to good engineering practice, pressure testing every three or four years may be warranted in addition to regular inspection of aboveground valves, piping, and appurtenances. However, we believe that regular inspection is sufficient to help prevent discharges and will not impose any additional requirements at this time.

- Buried piping*:* We believe that any buried piping, regardless of length, may cause a discharge, and therefore should be tested. Double-walled piping might be an acceptable alternative to integrity and leak testing or monthly monitoring. If an owner or operator chooses double-walled piping as an alternative, they must explain their nonconformance with the rule requirements, and explain how double-walled piping provides equivalent environmental protection. See 112.7(a)(2).

  We require that an owner or operator only conduct integrity and leak testing of such piping at the time of installation, modification, construction, relocation, or replacement. We believe that when piping is exposed for any reason, integrity and leak testing of such exposed piping according to industry standards is appropriate because piping is visible at that point, and testing is easier because the piping is more accessible. We recommend evaluations of unprotected underground piping be conducted in accordance with industry standards, to preserve flexibility in case the time frame changes with changing technology.

  If an owner or operator has vaulted containers, the requirement for integrity and leak testing of buried piping might be the subject of a deviation under §112.7(a)(2) if those pipes, valves, and fittings come out of the top of the container and are not buried, or are encased in a double-walled piping system and the owner or operator thereby significantly reduces the potential for corrosion.

- Industry standards*:* Industry standards that may assist an owner or operator with inspection and testing of valves, piping, and appurtenances include: (1) API Standard 570, "Piping Inspection Code (Inspection, Repair, Alteration, and Rerating of In-Service Piping Systems"; (2) API

Recommended Practice 574, "Inspection Practices for Piping System Components"; (3) American Society of Mechanical Engineers (ASME) B31.3, "Process Piping"; and, (4) ASME B31.4, "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia, and Alcohols."

Revised Rule	Old Rule
Sec.112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities). . . . . . . (d) . . . (5) *Warn all vehicles entering the facility to be sure that no vehicle will endanger aboveground piping* **or other oil transfer operations.**	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (3) . . . (v) Vehicular traffic granted entry into the facility should be warned verbally or by appropriate signs to be sure that the vehicle, because of its size, will not endanger above ground piping. . . . . . .

Notes

- Vehicular warnings: The rule requires an owner or operator to warn vehicular traffic so that no vehicle will endanger aboveground piping or other oil transfer operations. The requirement applies to all facilities, large or small. Warnings may include verbal warnings, signs, or marking and temporary protection of piping or equipment. No particular height restriction is incorporated into the rule. Rather, aboveground piping at any height must be protected from vehicular traffic unless the piping is so high that all vehicular traffic passes underneath the piping. In this case, or where the requirement is infeasible, the owner or operator may be able to use the deviation provision in §112.7(a)(2) if they explain their reasons for nonconformance and provide equivalent environmental protection.

SPCC RULE TEXT COMPARISON

SECTION 112.9

Revised Rule	Old Rule
Sec.112.9 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities. *If you are the owner or operator of an onshore production facility, you must:* *(a) Meet the general requirements for the Plan listed under §112.7, and the specific discharge prevention and containment procedures listed under this section.*	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . (e) In addition to the minimal prevention standards listed under Sec. 112.7(c), sections of the Plan should include a complete discussion of conformance with the following applicable guidelines, other effective spill prevention and containment procedures (or, if more stringent, with State rules, regulations and guidelines): . . . . . . (6) <u>Oil production facility (onshore) –</u> . . . . .

Notes

- <u>Editorial changes</u>: We added an introduction to help rewrite the section in the active voice. Since the owner or operator is the person with responsibility to implement a Plan, the mandates of the rule are properly addressed to him, except as specifically noted.

  Section 112.9(a) merely references the general requirements that all facilities must meet as well as the specific requirements that an owner or operator of onshore oil production facility must meet.

Revised Rule	Old Rule
Sec.112.9 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities. . . . . . . (b) Oil production *facility drainage.* (1) At tank batteries *and separation and treating areas where there is a reasonable possibility of a discharge as described in §112.1(b), close and seal at all times drains of dikes or drains of equivalent measures required under §112.7(c)(1), except when draining uncontaminated rainwater.* Prior to drainage, *you must inspect the diked area and take action as provided in §112.8(c)(3)(ii), (iii), and (iv). You must remove* accumulated oil on the rainwater and *return it* to storage or *dispose of it* in accordance with *legally* approved methods.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (5) . . . (ii) Oil production facility (onshore) drainage. (A) At tank batteries and central treating stations where an accidental discharge of oil would have a reasonable possibility of reaching navigable waters, the dikes or equivalent required under Sec. 112.7(c)(1) should have drains closed and sealed at all times except when rainwater is being drained. Prior to drainage, the diked area should be inspected as provided in paragraphs (e)(2)(iii) (B), (C), and (D) of this section. Accumulated oil on the rainwater should be picked up and returned to storage or disposed of in accordance with approved methods. . . . . . .

Notes

- NPDES records: The revised rule provides that records required by NPDES permit regulations (40 CFR 122.41(j)(2) and 112.41(m)(3)) are allowable to record stormwater bypass events for SPCC purposes in lieu of records specifically generated for that purpose.

- Applicability: This requirement applies to both large and small facilities to help prevent discharges as described in §112.1(b). The risk of such a discharge and the accompanying environmental damage may be devastating whether it comes from a large or small facility.

- Engineering methods: "Equivalent" measures referenced in the rule might, depending on good engineering practice, include using structures such as stand pipes designed to handle flow-through conditions at water flood oil production operations, where large volumes of water may be directed to oil storage tanks if water discharge lines on oil-water separators become plugged. Any alternate measures must provide environmental protection equivalent to the rule requirement.

- Industry standards: Industry standards that may assist an owner or operator with facility drainage include API Recommended Practice 51, "Onshore Oil and Gas Production Practices for Protection of the Environment."

Revised Rule	Old Rule
Sec.112.9 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities. . . . . . . (b) . . . (2) *Inspect at regularly scheduled intervals field drainage systems (such as drainage ditches or road ditches),* and oil traps, sumps, or skimmers, *for an accumulation of oil that may have resulted from any small discharge. You must promptly remove any accumulations of oil.*	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (5) . . . (ii) . . . (B) Field drainage ditches, road ditches, and oil traps, sumps or skimmers, if such exist, should be inspected at regularly scheduled intervals for accumulation of oil that may have escaped from small leaks. Any such accumulations should be removed. . . . . . .

Notes

- Applicability: Crude oil transfers from production fields into tank trucks or cars are covered by the general requirements contained in §112.7(c) and (h), both of which require some form of secondary containment. Cleanup of oil, oil-contaminated soil, and oil-contaminated materials from field drainage ditches, road ditches, or other field drainage system is covered by this paragraph. The cleanup of oil from diked areas at onshore production facilities is not specifically covered by the rules. However, the presence of oil in diked areas may impair the quality of the dike or the capacity for secondary containment, and if so, the oil must be removed.

- Inspection schedule: We retained the "regularly scheduled intervals" standard for inspections. This standard means regular inspections according to industry standards or on a schedule sufficient to prevent a discharge as described in §112.1(b). Whatever schedule for inspections is selected must be documented in the Plan. We decline to specify a specific interval because such an interval might become obsolete with changing technology.

- Accumulations of oil and oil-contaminated soil: We have adequate authority to require cleanup of an accumulation of oil, including on soil and other materials, because section 311(j)(1)(C) of the CWA provides EPA with the authority to establish procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil. The broad definition of "oil" in CWA section 311(a)(1) covers "oil refuse" and "oil mixed with wastes other than dredged spoil." If field drainage systems allow the accumulation of oil on the soil or other materials at the onshore facility and that oil threatens navigable water or adjoining shorelines, then EPA has authority to establish a method or procedure – i.e., the removal of oil contaminated soil to prevent that oil from becoming a discharge as described in §112.1(b). The cleanup standard under this paragraph requires the complete removal of the contaminated oil, soil, or other materials, either by removal, or by bioremediation, or in any other effective, environmentally sound manner.

- Prompt cleanup: "Prompt" cleanup means beginning the cleanup immediately after discovery of the discharge or immediately after any actions necessary to prevent fire or explosion or other imminent threats to worker health and safety.

Revised Rule	Old Rule
Sec.112.9 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities. . . . . . . (c) Oil production *facility bulk* storage *containers.* (1) *Not use a container for the* storage of oil unless its material and construction are compatible with the material stored and the conditions of storage.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (5) . . . (iii) Oil production facility (onshore) bulk storage tanks. (A) No tank should be used for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage. . . . . .

Notes

- Recommendation v. requirement*:* We retained the mandatory requirement to use no container for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage. In most cases good engineering practice and liability concerns will prompt the use of industry standards. See §112.3(d)(1)(iii). In addition, local governmental standards on construction, materials, and installation sometimes control industry standards on these matters.

- Industry standards*:* Industry standards that may assist an owner or operator with materials for and construction of onshore bulk storage production facilities include: (1) API Specification 12B, "Bolted Tanks for Storage of Production Liquids"; (2) API Specification 12D, "Field Welded Tanks for Storage of Production Liquids"; (3) API Specification 12F, "Shop Welded Tanks for Storage of Production Liquids"; (4) API Specification 12J, "Oil Gas Separators"; (5) API Specification 12K, "Indirect-Type Oil Field Heaters"; and, (6) API Specification 12L, "Vertical and Horizontal Emulsion Treaters."

Revised Rule	Old Rule
Sec.112.9 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities. . . . . . . (c) . . . (2) *Provide all tank battery, separation, and treating facility installations with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation. You must safely confine drainage from undiked areas in a catchment basin or holding pond.*	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (5) . . . (iii) . . . (B) All tank battery and central treating plant installations should be provided with a secondary means of containment for the entire contents of the largest single tank if feasible, or alternate systems such as those outlined in Sec. 112.7(c)(1). Drainage from undiked areas should be safely confined in a catchment basin or holding pond. . . . . . .

Notes

- Secondary containment The requirement applies to oil leases of any size. Secondary containment is not required for the entire leased area, merely for the contents of the largest single container in the tank battery, separation, and treating facility installation, with sufficient freeboard to contain precipitation. Freeboard sufficient to contain precipitation is freeboard installed according to industry standards, or in an amount sufficient to avert a discharge as described in §112.1(b). This standard is consistent with the amount of freeboard required in §112.8(c)(2).

- Drainage*:* Drainage from any undiked area poses a threat of contamination. When drainage from undiked areas is covered by stormwater discharge permits, that part of the BMP might be usable for SPCC purposes. An owner or operator can use NPDES records for SPCC purposes.

- Industry standards*:* Industry standards that may assist an owner or operator with secondary containment at onshore production facilities include: (1) API Recommended Practice 51, “Onshore Oil and Gas Production Practices for Protection of the Environment”; (2) NFPA 30, “Flammable and Combustible Liquids Code”; and, (3) BOCA, “National Fire Prevention Code.”

Revised Rule	Old Rule
Sec.112.9 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities. . . . . . . (c) . . . (3) *Periodically and upon a regular schedule visually inspect each container of oil for deterioration and maintenance needs, including* the foundation and *support of each container* that *is on or* above the surface of the ground.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (5) . . . (iii) All tanks containing oil should be visually examined by a competent person for condition and need for maintenance on a scheduled periodic basis. Such examination should include the foundation and supports of tanks that are above the surface of the ground. . . . . .

Notes

- Frequency of inspection: We have maintained the old standard for frequency of inspection, according to industry standards. Such standards may change with changing technology. Therefore, a frequency of "periodically and upon a regular schedule" preserves maximum flexibility and upholds statutory intent.

- Extent of inspection: In addition to external inspection, internal inspection of containers is also necessary to detect possible flaws that could cause a discharge. The inspection must also include foundations and supports that are on or above the surface of the ground. If, for some reason, it is not practicable to inspect the foundations and supports, an owner or operator may deviate from the requirement under §112.7(a)(2), if he explains his rationale for nonconformance and provide equivalent environmental protection.

- Record maintenance: Section 112.7(e) requires record maintenance for three years. However, we note that certain industry standards (for example, API Standard 653 or API Recommended Practice 12R1) may specify that an owner or operator maintain records for longer than three years.

- Industry standards:. Industry standards that may assist an owner or operator with inspection of containers at onshore production facilities include: (1) API Recommended Practice 12R1, "Recommended Practice for Setting, Maintenance, Inspection, Operation, and Repair of Tanks in Production Service"; and, (2) "API Standard 653, "Tank Inspection, Repair, Alteration, and Reconstruction."

Revised Rule	Old Rule
Sec.112.9 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities. . . . . . . (c) . . . (4) *Engineer or update new and old tank battery installations in accordance with good engineering practice to prevent discharges. You must provide at least one of the following*: (i) *Container capacity adequate* to assure that a *container* will not overfill if a pumper/gauger *is* delayed in making *regularly scheduled* rounds. (ii) Overflow equalizing lines between *containers* so that a full *container* can overflow to an adjacent *container*. (iii) *Vacuum protection adequate* to prevent *container* collapse during a pipeline run *or other transfer of oil from the container.* (iv) High level sensors to generate and transmit an alarm signal to the computer where *the facility is subject to a* computer production control system.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (5) . . . (iii) . . . (D) New and old tank battery installations should, as far as practical, be fail-safe engineered or updated into a fail-safe engineered installation to prevent spills. Consideration should be given to one or more of the following: (1) Adequate tank capacity to assure that a tank will not overfill should a pumper/gauger be delayed in making his regular rounds. (2) Overflow equalizing lines between tanks so that a full tank can overflow to an adjacent tank. (3) Adequate vacuum protection to prevent tank collapse during a pipeline run. (4) High level sensors to generate and transmit an alarm signal to the computer where facilities are a part of a computer production control system. . . . . . .

Notes

- Good engineering practice: The revised rule retains this section as a requirement, both to improve spill prevention and to avoid confusion among the regulated community (because of the similar requirement for bulk storage containers at facilities other than production facilities). Nevertheless, an owner or operator has flexibility as to which measures are used, and may choose the least expensive alternative listed in §112.9(c)(4). For example, should vacuum protection be too costly, another alternative can be chosen. Furthermore, an owner or operator may also deviate from the requirement under §112.7(a)(2) if he can explain nonconformance and provide equivalent environmental protection by some other means. We revised the paragraph on vacuum protection to clarify that the rule addresses any type of transfer from the tank, not merely a pipeline run.

- Industry standards: Industry standards that may assist an owner or operator with alarm systems include: (1) API, "Manual of Petroleum Measurement Standards"; (2) API Recommended Practice 51, "Onshore Oil and Gas Production Practices for Protection of the Environment"; (3) API Recommended Practice 2350, "Overfill Protection for Storage Tanks in Petroleum Facilities"; and, (4) NFPA 30, "Flammable and Combustible Liquids Code."

- Editorial changes and clarifications: "Fail-safe" engineering becomes "good engineering practice," because fail-safe engineering is a misnomer. The change in terminology does not imply any substantive change in the level of environmental protection required.
  We deleted the phrase "as far as is practical," because it is confusing when compared to the text of §112.7(a)(2). Under §112.7(a)(2), an owner or operator may explain his reasons for nonconformance, and provide equivalent environmental protection by some other means.

  An owner or operator must discuss actual standards used in the Plan. Section 112.3(d)(1)(iii) also requires the Professional Engineer to certify that he has considered applicable industry standards in the preparation of the Plan.

  In the introductory paragraph, the phrase "Consideration shall be given to providing...." becomes, "You must provide...." This change makes the language consistent with a companion paragraph dealing with good engineering design, i.e., §112.8(c)(8).

Revised Rule	Old Rule
Sec.112.9 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities. . . . . . . (d) Facility transfer operations, oil production facility. (1) *Periodically and upon a regular schedule inspect all aboveground valves and piping associated with transfer operations for the general condition of* flange joints, valve glands and bodies, drip pans, pipe supports, pumping well polish rod stuffing boxes, bleeder and gauge valves, *and other such items.*	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (5) . . . (iv) Facility transfer operations, oil production facility (onshore). (A) All above ground valves and pipelines should be examined periodically on a scheduled basis for general condition of items such as flange joints, valve glands and bodies, drip pans, pipeline supports, pumping well polish rod stuffing boxes, bleeder and gauge valves. . . . . . .

Notes

- Applicability: The rule applies equally to large and small facilities, because failure to inspect piping and valves at any facility might lead to a discharge as described in §112.1(b).

- Frequency of inspections: We retained the current inspection frequency of periodic inspections, but editorially changed it to "upon a regular schedule." The standard of inspections "upon a regular schedule" means in accordance with industry standards or at a frequency sufficient to prevent discharges as described in §112.1(b). Whatever frequency of inspections is selected must be documented in the Plan.

- Recordkeeping: Although we do not specify a record retention period longer than three years (see §112.7(e)), comparison records for compliance with certain industry standards may require an owner or operator to maintain records for longer than three years. PE certification of these inspections and records is not required.

Revised Rule	Old Rule
Sec.112.9 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities. . . . . . . (d) . . . (2) *Inspect saltwater (oil field brine) disposal facilities often*, particularly following a sudden change in atmospheric temperature, to detect possible system upsets *capable of causing a discharge*.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (5) . . . (iv) . . . (B) Salt water (oil field brine) disposal facilities should be examined often, particularly following a sudden change in atmospheric temperature to detect possible system upsets that could cause an oil discharge. . . . . .

Notes

- Applicability: The rule applies to any regulated facility with salt water disposal if the potential exists to discharge oil in amounts that may be harmful, as defined in 40 CFR 110.3. This standard is necessary to protect the environment.

- Sudden change in temperature: A sudden change in temperature means any abrupt change in temperature, either up or down, which could cause system upsets.

- Frequency of inspections: Inspections of these facilities must be conducted "often." "Often" means in accordance with industry standards, or more frequently, if as noted, conditions warrant. Whatever frequency of inspections is chosen must be documented in the Plan.

Revised Rule	Old Rule
Sec.112.9 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities. . . . . . . (d) . . . (3) *Have a program of flowline maintenance to prevent discharges from each flowline.*	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (5) . . . (iv) . . . (C) Production facilities should have a program of flowline maintenance to prevent spills from this source. The program should include periodic examinations, corrosion protection, flowline replacement, and adequate records, as appropriate, for the individual facility. . . . . . .

Notes

- Applicability: A program of flowline maintenance is necessary to prevent discharges both at large and small facilities. We do not include recommendations in the rule, to avoid confusing the public over what is mandatory and what is discretionary. This rule contains only mandatory requirements.

- Frequency of inspections: We recommend that an owner or operator conduct inspections either according to industry standards or at a frequency sufficient to prevent a discharge as described in §112.1(b). Under §112.3(d)(1)(iii), the Professional Engineer must certify that the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards.

- Corrosion protection, flowline replacement: While we have deleted the recommendation from rule text due to reasons explained above, we recommend corrosion protection and flowline replacement when necessary, because those measures help to prevent discharges as described in §112.1(b).

- Transfer operation: A transfer operation is one in which oil is moved from or into some form of transportation, storage, equipment, or other device, into or from some other or similar form of transportation, such as a pipeline, truck, tank car, or other storage, equipment, or device.

SPCC RULE TEXT COMPARISON

SECTION 112.10

Revised Rule	Old Rule
Sec.112.10 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil drilling and workover facilities. *If you are the owner or operator of an onshore oil drilling and workover facility, you must:* (a) *Meet the general requirements listed under §112.7, and also meet the specific discharge prevention and containment procedures listed under this section.*	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) In addition to the minimal prevention standards listed under Sec. 112.7(c), sections of the Plan should include a complete discussion of conformance with the following applicable guidelines, other effective spill prevention and containment procedures (or, if more stringent, with State rules, regulations and guidelines): . . . . . . (6) <u>Oil drilling and workover facilities (onshore)</u>. . . . . . .

Notes

- <u>Editorial changes</u>: The introductory text allows us to rewrite the section in the active voice. Since the owner or operator is the person with responsibility to implement a Plan, the mandates of the rule are properly addressed to him, except as specifically noted.

  Section 112.10(a) merely references the general requirements which all facilities must meet as well as the specific requirements that facilities in this category must meet.

Revised Rule	Old Rule
Sec.112.10 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil drilling and workover facilities. . . . . . . (b) *Position or locate mobile drilling or workover equipment so as to prevent a discharge as described in §112.1(b).* (c) *Provide catchment basins or diversion structures to intercept and contain discharges* of fuel, crude oil, or oily drilling fluids. (d) *Install* a blowout prevention (BOP) assembly and well control system *before drilling below any casing string or during workover operations. The BOP assembly and well control system must be* capable of controlling any well-head pressure that *may be encountered* while that BOP assembly *and well control system are* on the well.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (6) . . . (i) Mobile drilling or workover equipment should be positioned or located so as to prevent spilled oil from reaching navigable waters. (ii) Depending on the location, catchment basins or diversion structures may be necessary to intercept and contain spills of fuel, crude oil, or oily drilling fluids. (iii) Before drilling below any casing string or during workover operations, a blowout prevention (BOP) assembly and well control system should be installed that is capable of controlling any well head pressure that is expected to be encountered while that BOP assembly is on the well. Casing and BOP installations should be in accordance with State regulatory agency requirements. . . . . . .

Notes

- Site location: A contractor is not normally responsible for site location, site design, or maintenance. Such decisions are the responsibility of the facility owner or operator. The owner or operator of the facility has the responsibility to locate equipment so as to prevent discharges as described in §112.1(b).

- Service jobs: Where BOP assembly is not necessary, as for certain routine service jobs, such as the installation of a rod pumping unit, or the batch treatment of a well with corrosion inhibitor, an owner or operator may deviate from the requirement under §112.7(a)(2), and explain its absence in the Plan. When BOP assembly is unnecessary because pressures are not great enough to cause a blowout, it is likewise unnecessary to provide equivalent environmental protection.

- Industry standards: Industry standards that may assist an owner or operator with blowout prevention assembly include: (1) API Recommended Practice 16E, “Design of Control Systems for Drilling Well Control Equipment”; (2) API Recommended Practice 53, “Blowout Prevention Equipment Systems for Drilling Operations”; (3) API Specification 16A, “Drill Through Equipment”; and, (4) API Specification 16D, “Control Systems for Drilling Well Control Equipment.”

SPCC RULE TEXT COMPARISON

SECTION 112.11

Revised Rule	Old Rule
Sec.112.11 Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities. *If you are the owner or operator of an offshore oil drilling, production, or workover facility, you must*: (a) *Meet the general requirements listed under §112.7, and also meet the specific discharge prevention and containment procedures listed under this section.*	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) In addition to the minimal prevention standards listed under Sec. 112.7(c), sections of the Plan should include a complete discussion of conformance with the following applicable guidelines, other effective spill prevention and containment procedures (or, if more stringent, with State rules, regulations and guidelines): . . . . . . (7) <u>Oil drilling, production, or workover facilities (offshore)</u>. . . . . .

Notes

- <u>Editorial changes</u>: We added an introduction as an editorial device to allow us to rewrite the section in the active voice. Because the owner or operator is the person with responsibility to implement a Plan, the mandates of the rule are properly addressed to him, except as specifically noted.

Revised Rule	Old Rule
Sec.112.11 Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities. . . . . . . (b) *Use oil drainage collection equipment* to prevent and control small oil *discharges* around pumps, glands, valves, flanges, expansion joints, hoses, drain lines, separators, treaters, tanks, and *associated* equipment. *You must control and direct facility drains* toward a central collection sump *to prevent the facility from having a discharge as described in §112.1(b).* Where drains and sumps are not practicable, *you must remove* oil contained in collection equipment as often as necessary to prevent overflow. (c) For facilities employing a sump system, *provide adequately sized sump and drains and make available a spare pump* to remove liquid from the sump and assure that oil does not escape. *You must employ a regularly scheduled* preventive maintenance inspection and testing program to assure reliable operation of the liquid removal system and pump start-up device. Redundant automatic sump pumps and control devices may be required on some installations.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (7) . . . (ii) Oil drainage collection equipment should be used to prevent and control small oil spillage around pumps, glands, valves, flanges, expansion joints, hoses, drain lines, separators, treaters, tanks, and allied equipment. Drains on the facility should be controlled and directed toward a central collection sump or equivalent collection system sufficient to prevent discharges of oil into the navigable waters of the United States. Where drains and sumps are not practicable oil contained in collection equipment should be removed as often as necessary to prevent overflow. (iii) For facilities employing a sump system, sump and drains should be adequately sized and a spare pump or equivalent method should be available to remove liquid from the sump and assure that oil does not escape. A regular scheduled preventive maintenance inspection and testing program should be employed to assure reliable operation of the liquid removal system and pump start-up device. Redundant automatic sump pumps and control devices may be required on some installations. . . . . .

Notes

- Removal of collected oil: An owner or operator must remove collected oil as often as is necessary to prevent such discharges.

- Frequency of inspections: We retained the old rule language requiring a "regularly scheduled" preventive maintenance program, because we believe that the frequency of maintenance should be in accordance with industry standards or frequently enough to prevent a discharge as described in §112.1(b). Whatever schedule is chosen must be documented in the Plan.

Revised Rule	Old Rule
Sec.112.11 Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities. . . . . . . (d) *At facilities with* areas where separators and treaters are equipped with dump valves *which predominantly fail* in the closed position and *where* pollution risk is high, *specially equip the facility to prevent the discharge* of oil. *You must prevent the discharge of oil by:* *(1)* Extending the flare line to a diked area if the separator is near shore; *(2)* Equipping *the separator* with a high liquid level sensor that will automatically shut in wells producing to the separator; *or* *(3)* *Installing* parallel redundant dump valves. (e) *Equip atmospheric storage or surge containers* with high liquid level sensing devices *that activate an alarm or control the flow, or otherwise prevent discharges.* (f) *Equip pressure containers with high and low pressure sensing devices that activate an alarm or control the flow*.	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (7) . . . (iv) In areas where separators and treaters are equipped with dump valves whose predominant mode of failure is in the closed position and pollution risk is high, the facility should be specially equipped to prevent the escape of oil. This could be accomplished by extending the flare line to a diked area if the separator is near shore, equipping it with a high liquid level sensor that will automatically shut-in wells producing to the separator, parallel redundant dump valves, or other feasible alternatives to prevent oil discharges. (v) Atmospheric storage or surge tanks should be equipped with high liquid level sensing devices or other acceptable alternatives to prevent oil discharges. (vi) Pressure tanks should be equipped with high and low pressure sensing devices to activate an alarm and/or control the flow or other acceptable alternatives to prevent oil discharges. . . . . . .

Notes

- Editorial changes and clarifications: We added the words "that activate an alarm or control the flow" to clarify that these activities, along with "otherwise" controlling discharges, are the purpose of the sensing devices we reference in the paragraph. We deleted the phrase "or other acceptable alternatives," because it is confusing when compared to the text of §112.7(a)(2). An owner or operator may deviate from a requirement under §112.7(a)(2) if he explains his reasons for nonconformance and provide equivalent environmental protection.

Revised Rule	Old Rule
Sec.112.11 Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities. . . . . . . (g) *Equip containers with* suitable corrosion protection. (h) *Prepare and maintain at the facility a written procedure within the Plan for inspecting and testing pollution prevention equipment and systems.* (i) *Conduct testing and inspection* of the pollution prevention equipment and systems at the *facility on* a scheduled periodic basis, commensurate with the complexity, conditions, and circumstances of the facility and *any other appropriate regulations*. *You must use simulated discharges for testing and inspecting human and equipment pollution control and countermeasure systems.*	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (7) . . . (vii) Tanks should be equipped with suitable corrosion protection. (viii) A written procedure for inspecting and testing pollution prevention equipment and systems should be prepared and maintained at the facility. Such procedures should be included as part of the SPCC Plan. (7)(ix) Testing and inspection of the pollution prevention equipment and systems at the facility should be conducted by the owner or operator on a scheduled periodic basis commensurate with the complexity, conditions and circumstances of the facility or other appropriate regulations. . . . . . .

Notes

- Industry standards*:* We expect that facilities will follow industry standards for corrosion protection as well as other matters (see §112.3(d)(iii)). We do not prescribe a particular standards in the rule text because those standards are subject to change, and we do not want to incorporate a potentially obsolescent standard into the rules.

  Industry standards that may assist an owner or operator with corrosion include: (1) National Association of Corrosion Engineer standards; (2) STI Recommended Practice R892, "Recommended Practice for Corrosion Protection of Underground Steel Piping Associated with Underground Storage and Dispensing Systems," and, (3) STI Recommended Practice 893, "Recommended Practice for External Corrosion of Shop Fabricated Aboveground Steel Storage Tank Floors."

- Frequency of testing: We have retained the old requirement for testing on a "scheduled periodic basis" commensurate with conditions at the facility because we believe that testing should follow industry standards or be conducted at a frequency sufficient enough to prevent a discharge as described in §112.1(b) rather than any prescribed time frame. Whatever frequency is chosen must be documented in the Plan.

Revised Rule	Old Rule
Sec.112.11 Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities. . . . . . . (j) *Describe in detailed records* surface and subsurface well shut-in valves and devices in use at the facility *for each well sufficiently* to determine *their* method of activation or control, *such as* pressure differential, change in fluid or flow conditions, combination of pressure and flow, manual or remote control mechanisms. (k) *Install a BOP assembly and well control system during workover operations and before drilling below any casing string. The BOP assembly and well control system must be capable* of controlling any well-head pressure that *may be encountered* while the BOP assembly *and well control system are* on the well. (l) *Equip all manifolds (headers) with check valves on individual flowlines.*	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (7) . . . (x) Surface and subsurface well shut-in valves and devices in use at the facility should be sufficiently described to determine method of activation or control, e.g., pressure differential, change in fluid or flow conditions, combination of pressure and flow, manual or remote control mechanisms. Detailed records for each well, while not necessarily part of the plan should be kept by the owner or operator. (xi) Before drilling below any casing string, and during workover operations a blowout preventer (BOP) assembly and well control system should be installed that is capable of controlling any well-head pressure that is expected to be encountered while that BOP assembly is on the well. Casing and BOP installations should be in accordance with State regulatory agency requirements. (xiv) All manifolds (headers) should be equipped with check valves on individual flowlines. . . . . . .

Notes

- Editorial changes and clarifications: We kept the recordkeeping requirement of the old rule, but deleted language requiring maintenance of those records for five years. The effect of the deletion is that records become subject to the general three-year recordkeeping requirement. See §112.7(e). An owner or operator may keep the records as part of the Plan or may keep them with the Plan.

- Alternatives: The question of whether blowout prevention is warranted or impractical or not for drilling below condctor casing is one of good engineering practice. Acceptable alternatives may be permissible under the rule permitting deviations (§112.7(a)(2)) when the owner or operator states the reasons for nonconformance and provides equivalent environmental protection.

- Industry standards: Industry standards that may assist an owner or operator with offshore blowout prevention assembly and well control systems include: (1) API Recommended Practice 16E, "Design of Control Systems for Drilling Well Control Equipment"; (2) API Recommended Practice 53, "Blowout Prevention Equipment Systems for Drilling Operations"; (3) API Specification 16A, "Drill Through Equipment"; (4) API Specification 16C, "Choke and Kill Systems"; and, (5) API Specification 16D,

"Control Systems for Drilling Well Control Equipment."

Revised Rule	Old Rule
Sec.112.11 Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities. . . . . . . (m) *Equip the flowline with a high pressure sensing device and shut-in valve at the wellhead if the shut-in well pressure is greater than the working pressure of the flowline and manifold valves up to and including the header valves. Alternatively you may provide a pressure relief system for flowlines.* (n) *Protect all piping appurtenant to the facility from corrosion, such as with protective coatings or cathodic protection.* (o) *Adequately protect* sub-marine *piping* appurtenant to the *facility against* environmental stresses and other activities such as fishing operations. (p) *Maintain sub-marine piping appurtenant to the facility in good operating condition at all times. You must periodically and according to a schedule inspect or test such piping for failures. You must document and keep a record of such inspections or tests at the facility.*	Sec.112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans. . . . . . . (e) . . . (7) . . . (xv) If the shut-in well pressure is greater than the working pressure of the flowline and manifold valves up to and including the header valves associated with that individual flowline, the flowline should be equipped with a high pressure sensing device and shut-in valve at the wellhead unless provided with a pressure relief system to prevent over pressuring. (xvi) All pipelines appurtenant to the facility should be protected from corrosion. Methods used, such as protective coatings or cathodic protection, should be discussed. (xvii) Sub-marine pipelines appurtenant to the facility should be adequately protected against environmental stresses and other activities such as fishing operations. (xviii) Sub-marine pipelines appurtenant to the facility should be in good operating condition at all times and inspected on a scheduled periodic basis for failures. Such inspections should be documented and maintained at the facility. . . . . . .

Notes

- Corrosion protection: We have deleted the recommendation to discuss the method of corrosion protection, because it is surplus. In your SPCC Plan, an owner or operator must discuss the method of corrosion protection used. See §112.7(a)(1).

- Editorial changes and clarifications: We have rewritten the rule in the active voice. We also deleted the proposed recommendation because this rule contains only mandatory items, and because the recommendation is redundant. Whatever manner of protection is chosen to protect sub-marine piping must be discussed in the Plan.

SPCC RULE TEXT COMPARISON

SUBPART C

Revised Rule	Old Rule
4. Part 112 is amended by adding subpart C consisting of §§112.12 through 112.15 to read as follows: *SUBPART C - Requirements for Animal Fats and Oils and Greases, and Fish and Marine Mammal Oils; and for Vegetable Oils, including Oils from Seeds, Nuts, Fruits, and Kernels.* *Sec.* *112.12 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities).* *112.13 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities.* *112.14 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil drilling and workover facilities.* *112.15 Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities.*	[No direct counterpart in old rule.]

Notes

- Reorganization: We reorganized the rule to clarify SPCC Plan requirements for different types of facilities, and to provide requirements for different types of oil. Subpart A consists of an applicability section, definitions, and general requirements for all facilities. Subparts B and C outline the requirements for different types of oils. Subpart B is for petroleum oils and non-petroleum oils, except for animal fats and vegetable oils. Subpart C is for animal fats and oils and greases, and fish and marine mammal oils; and for vegetable oils, including oils from seeds, nuts, fruits, and kernels. Subpart D is for response. Subparts B and C are divided into sections to reflect the differing types of facilities for each type of oil. Subpart D is for response requirements.

  Because EPA has not yet proposed differentiated requirements for public notice and comment, the requirements for facilities storing or using all classes of oil are the same. However, we have published an advance notice of proposed rulemaking seeking comments on how we might differentiate requirements for facilities storing or using the various classes of oil. See 64 FR 17227, April 8, 1999. After considering these comments, if there is adequate justification for differentiation, we will propose a rule.

SPCC RULE TEXT COMPARISON

SECTIONS 112.12 - 112.15

SUBPART C – Requirements for Animal Fats and Oils and Greases, and Fish and Marine Mammal Oils; and for Vegetable Oils, including Oils from Seeds, Nuts, Fruits, and Kernels.	
For text comparison on...	**See...**
Sec. 112.12 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities).	Sec. 112.8 Spill Prevention, Control, and Countermeasure Plan requirements for onshore facilities (excluding production facilities).
Sec. 112.13 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities.	Sec. 112.9 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities.
Sec. 112.14 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil drilling and workover facilities.	Sec. 112.10 Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil drilling and workover facilities.
Sec. 112.15 Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities.	Sec. 112.11 Spill Prevention, Control, and Countermeasure Plan requirements for offshore oil drilling, production, or workover facilities.

Notes

- Reorganization: We reorganized the rule to clarify SPCC Plan requirements for different types of facilities, and to provide requirements for different types of oil. Subpart C is for animal fats and oils and greases, and fish and marine mammal oils; and for vegetable oils, including oils from seeds, nuts, fruits, and kernels. Subpart D is for response. Subpart C is divided into sections to reflect the differing types of facilities for each type of oil.

  Because EPA has not yet proposed differentiated requirements for public notice and comment, the requirements for facilities storing or using all classes of oil are the same. However, we have published an advance notice of proposed rulemaking seeking comments on how we might differentiate requirements for facilities storing or using the various classes of oil. See 64 FR 17227, April 8, 1999. After considering these comments, if there is adequate justification for differentiation, we will propose a rule.

SPCC RULE TEXT COMPARISON

SUBPART D

Revised Rule	Old Rule
5. Part 112 is amended by designating §§112.20 and 112.21 as subpart D, and adding a subpart heading as follows: *SUBPART D - Response Requirements* *Sec.* *112.20 Facility response plans.* *112.21 Facility response training and drills/exercises.*	[No direct counterpart in old rule.]

Notes

- Reorganization: We reorganized the rule to clarify SPCC Plan requirements for different types of facilities, and to provide requirements for different types of oil. Subpart A consists of an applicability section, definitions, and general requirements for all facilities. Subparts B and C outline the requirements for different types of oils. Subpart B is for petroleum oils and non-petroleum oils, except for animal fats and vegetable oils. Subpart C is for animal fats and oils and greases, and fish and marine mammal oils; and for vegetable oils, including oils from seeds, nuts, fruits, and kernels. Subpart D is for response. Subparts B and C are divided into sections to reflect the differing types of facilities for each type of oil. Subpart D is for response requirements.

Revised Rule	Old Rule
Sec. 112.20 Facility Response Plans. . . . . . . (h) A response plan shall follow the format of the model facility-specific response plan included in Appendix F to this part, unless *you have prepared* an equivalent response plan *acceptable to the Regional Administrator* to meet State or other Federal requirements.	Sec.112.20 Facility Response Plans. . . . . . . (h) A response plan shall follow the format of the model facility- specific response plan included in Appendix F to this part, unless an equivalent response plan has been prepared to meet State or other Federal requirements. . . . . .

Notes

- Acceptable formats: The rule does not specifically mention the ICP or any other format because the rule already allows the Regional Administrator flexibility to accept any format that meets all Federal requirements. See §112.20(h). An owner or operator may use the ICP, a State response plan, or other format acceptable to the Regional Administrator. We do not require use of any alternative format, but merely give the owner or operator the option to do so.

- Partially acceptable formats: An owner or operator has the option to integrate any or all parts of an ICP with the facility response plan. This gives the owner or operator flexibility in formatting. Similar to SPCC Plans, the Regional Administrator may accept partial use of alternative formats.

- PE certification: PE certification is only required for the SPCC portion of any ICP.

SPCC RULE TEXT COMPARISON

APPENDICES

Revised Rule	Old Rule
Appendix C to Part 112 – Substantial Harm Criteria . . . . . . 2.1 Non-Transportation-Related Facilities With a Total Oil Storage Capacity Greater Than or Equal to 42,000 Gallons Where Operations Include Over-Water Transfers of Oil. A non-transportation-related facility with a total oil storage capacity greater than *or equal to* 42,000 gallons that transfers oil over water to or from vessels must submit a response plan to EPA.	Appendix C to Part 112 – Substantial Harm Criteria . . . . . . 2.1 Non-Transportation-Related Facilities With a Total Oil Storage Capacity Greater Than or Equal to 42,000 Gallons Where Operations Include Over-Water Transfers of Oil. A non-transportation-related facility with a total oil storage capacity greater than 42,000 gallons that transfers oil over water to or from vessels must submit a response plan to EPA. . . . .

Notes

- Editorial change: We corrected the text of the first sentence in the section to correspond with the title, so that it reads "A non-transportation-related facility with a total oil storage capacity greater than or equal to 42,000 gallons that transfers oil over water to or from vessels must submit a response plan to EPA. The words "or equal to" to track rule language found at §112.20(f)(1)(i).

Revised Rule	Old Rule
Appendix C to Part 112 – Substantial Harm Criteria . . . . . . 2.4 Proximity to Public Drinking Water Intakes at Facilities with a Total *Oil Storage* Capacity Greater than or Equal to 1 Million Gallons. A facility with a total *oil* storage capacity greater than or equal to 1 million gallons must submit its response plan if it is located at a distance such that a discharge from the facility would shut down a public drinking water intake, which is analogous to a public water system as described at 40 CFR 143.2(c).	Appendix C to Part 112 – Substantial Harm Criteria . . . . . . 2.4 Proximity to Public Drinking Water Intakes at Facilities with a Total Storage Oil Capacity Greater than or Equal to 1 Million Gallons. A facility with a total storage capacity greater than or equal to 1 million gallons must submit its response plan if it is located at a distance such that a discharge from the facility would shut down a public drinking water intake, which is analogous to a public water system as described at 40 CFR 143.2(c). . . . .

Notes

- Editorial change: We revised the title of this section by reversing the order of the words "Storage" and "Oil" in the heading. We also added the word "oil" to the first sentence so that it reads, "A facility with a total oil storage capacity greater than * * *."

Revised Rule	Old Rule
Appendix D to Part 112 – Determination of a Worst Case Discharge Planning Volume . . . . . . Part A . . . . A.2 Secondary Containment – Multiple-Tank Facilities. . . . . . . [2] Secondary containment is described in 40 CFR *part 112, subparts A through C.* Acceptable methods and structures for containment are also given in 40 CFR 112.7(c)(1).	Appendix D to Part 112 – Determination of a Worst Case Discharge Planning Volume . . . . . . Part A . . . . A.2 Secondary Containment – Multiple-Tank Facilities. . . . . . . [2] Secondary containment is defined in 40 CFR 112.7(e)(2). Acceptable methods and structures for containment are also given in 40 CFR 112.7(c)(1). . . . . . .

Notes

- Editorial change: We revised footnote 2 to section A.2 of Part A, Appendix D, to reflect the new citation to the SPCC rule's secondary containment requirements.

Revised Rule	Old Rule
Appendix F to Part 112 – Facility-Specific Response Plan. . . . . . . 1.2.7 Current Operation. Briefly describe the facility's operations and include the *North American Industrial Classification System (NAICS)* code.	Appendix F to Part 112 – Facility-Specific Response Plan. . . . . . . 1.2.7 Current Operation. Briefly describe the facility's operations and include the Standard Industry Classification (SIC) code. . . . . .

Notes

- Editorial change: We revised section 1.2.7 to delete the reference to Standard Industry Classification (SIC) codes, and replace it with a reference to North American Industry Classification System (NAICS) codes. The NAICS was adopted by the United States, Canada, and Mexico on January 1, 1997 to replace the SIC codes.

Revised Rule	Old Rule
Appendix F to Part 112 – Facility-Specific Response Plan. . . . . . . 1.4.3 Analysis of the Potential for an Oil Discharge. . . . This analysis shall incorporate factors such as oil *discharge* history, horizontal range of a potential discharge, and vulnerability to natural disaster, and shall, as appropriate, incorporate other factors such as tank age. . . . The owner or operator may need to research the age of the *tanks the* oil *discharge* history at the facility.	Appendix F to Part 112 – Facility-Specific Response Plan. . . . . . . 1.4.3 Analysis of the Potential for an Oil Discharge. . . . This analysis shall incorporate factors such as oil spill history, horizontal range of a potential discharge, and vulnerability to natural disaster, and shall, as appropriate, incorporate other factors such as tank age. . . . The owner or operator may need to research the age of the tanks and the oil spill history at the facility. . . . . . .

Notes

- Editorial change: We revised the second and last sentences of this section by replacing the word "spill" with "discharge."

Revised Rule	Old Rule
Appendix F to Part 112 – Facility-Specific Response Plan. . . . . . . 1.7.3 Containment and Drainage Planning . . . . . . (7) Other cleanup materials. In addition, a facility owner or operator must meet the inspection and monitoring requirements for drainage contained in 40 CFR *part 112, subparts A through C*. A copy of the containment and drainage plans that are required in 40 CFR *part 112, subparts A through C* may be inserted in this section, including any diagrams in those plans. Note: The general permit for stormwater drainage may contain additional requirements	Appendix F to Part 112 – Facility-Specific Response Plan. . . . . . . 1.7.3 Containment and Drainage Planning . . . . . . (7) Other cleanup materials. In addition, facility owners or operators must meet the inspection and monitoring requirements for drainage contained in 40 CFR 112.7(e). A copy of the containment and drainage plans that are required in 40 CFR 112.7(e) may be inserted in this section, including any diagrams in those plans. Note: The general permit for stormwater drainage may contain additional requirements. . . . . . .

Notes

- Editorial change: We revised paragraph (7) of section 1.7.3 of Appendix F to use the new citation to the SPCC rule's inspection and monitoring requirements for drainage.

Revised Rule	Old Rule
Appendix F to Part 112 – Facility-Specific Response Plan. . . . . . . 1.8.1 Facility Self-Inspection Under 40 CFR *112.7(e), you must* include the written procedures and records of inspections *for each facility* in the SPCC Plan. *You must include the inspection records for each container*, secondary containment, and *item of* response equipment at the facility. *You must cross-reference the records of inspections of each container and secondary containment required by 40 CFR 112.7(e) in the facility response plan.* The inspection *record* of response equipment is a new requirement in this plan. Facility self-inspection requires two-steps: (1) a checklist of things to inspect; and (2) a method of recording the actual inspection and its findings. *You must note the date of each inspection. You must keep facility response plan records for five years.* **You must keep SPCC records for three years.**	Appendix F to Part 112 – Facility-Specific Response Plan. . . . . . . 1.8.1 Facility Self-Inspection Pursuant to 40 CFR 112.7(e)(8), each facility shall include the written procedures and records of inspections in the SPCC Plan. The inspection shall include the tanks, secondary containment, and response equipment at the facility. Records of the inspections of tanks and secondary containment required by 40 CFR 112.7(e) shall be cross- referenced in the response plan. The inspection of response equipment is a new requirement in this plan. Facility self-inspection requires two steps: (1) a checklist of things to inspect; and (2) a method of recording the actual inspection and its findings. The date of each inspection shall be noted. These records are required to be maintained for 5 years. . . . . . .

Notes

- Recordkeeping: We revised section 1.8.1 of Appendix F to reflect the three-year record maintenance periods for SPCC records, keeping the five-year period for FRP records.

- Editorial changes: We revised section 1.8.1 of Appendix F to use the new citation to the SPCC rule's recordkeeping requirements.

Revised Rule	Old Rule
Appendix F to Part 112 – Facility-Specific Response Plan. . . . . . . 1.8.1.1. Tank Inspection The tank inspection checklist presented below has been included as guidance during inspections and monitoring. Similar requirements exist in 40 CFR *part 112, subparts A through C.*	Appendix F to Part 112 – Facility-Specific Response Plan. . . . . . . 1.8.1.1. Tank Inspection . . . . . . The tank inspection checklist presented below has been included as guidance during inspections and monitoring. Similar requirements exist in 40 CFR 112.7(e). . . . .

Notes

- Editorial change: We revised section 1.8.1.1 of Appendix F to use the new citation to the SPCC rule's tank inspection requirements.

Revised Rule	Old Rule
Appendix F to Part 112 – Facility-Specific Response Plan. . . . . . . 1.8.1.3 Secondary Containment Inspection . . . . Similar requirements exist in 40 CFR *part 112, subparts A through C.*	Appendix F to Part 112 – Facility-Specific Response Plan. . . . . . . 1.8.1.3 Secondary Containment Inspection . . . . Similar requirements exist in 40 CFR 112.7(e). . . . .
Notes · Editorial change: We revised section 1.8.1.1.4 of Appendix F to use the new citation to the SPCC rule's secondary containment inspection requirements.	

Revised Rule	Old Rule
Appendix F to Part 112 – Facility-Specific Response Plan. . . . . . . 1.10 Security According to 40 CFR *112.7(g)* facilities are required to maintain a certain level of security, as appropriate.	Appendix F to Part 112 – Facility-Specific Response Plan. . . . . . . 1.10 Security According to 40 CFR 112.7(e)(9), facilities are required to maintain a certain level of security, as appropriate. . . . .

Notes

- Editorial change: We revised section 1.10 of Appendix F to use the new citation to the SPCC rule's security requirements.

Revised Rule	Old Rule
Appendix F to Part 112 – Facility-Specific Response Plan. . . . . . . 2.1 General Information . . . . . . (6) *North American Industrial Classification System (NAICS) Code:* Enter the facility's *NAICS* code as determined by the Office of Management and Budget (this information may be obtained from public library resources.)	Appendix F to Part 112 – Facility-Specific Response Plan. . . . . . . 2.1 General Information . . . . . . (6) Standard Industrial Classification (SIC) Code: Enter the facility's SIC code as determined by the Office of Management and Budget (this information may be obtained from public library resources). . . . . .

Notes

· Editorial change: We revised paragraph 2.1(6) to refer to NAICS codes in place of SIC codes.

Revised Rule	Old Rule
Appendix F to Part 112 – Facility-Specific Response Plan. . . . . . . 3.0 Acronyms . . . . . . *NAICS: North American Industrial Classification System*	Appendix F to Part 112 – Facility-Specific Response Plan. . . . . . . 3.0 Acronyms . . . . . . SIC: Standard Industrial Classification . . . . . .
Notes · <u>Editorial change</u>: We deleted the acronym for SIC and substituted the acronym for NAICS.	

Revised Rule	Old Rule
Appendix F to Part 112 – Facility-Specific Response Plan. . . . . . . ATTACHMENTS TO APPENDIX F . . . Attachment F-1-Response Plan Cover Sheet . . . . . . General Information . . . . . . *North American Industrial Classification System (NAICS) Code:*	Appendix F to Part 112 – Facility-Specific Response Plan. . . . . . . ATTACHMENTS TO APPENDIX F . . . . . . Attachment F-1--Response Plan Cover Sheet . . . . . . General Information . . . . . . Standard Industrial Classification (SIC) Code: . . . . . .

Notes

· Editorial change: We deleted the reference to SIC and substituted a reference to NAICS.