

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[OPA-2005-0001]; FRL-[REDACTED]

Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure Plan

Requirements - Amendments

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is today proposing to amend the Spill Prevention, Control, and Countermeasure (SPCC) Plan requirements to reduce the regulatory burden for certain facilities by: providing an option that would allow the owner/operator of facilities that store less than 10,000 gallons of oil, as well as meet other qualifying criteria, to self-certify their SPCC Plan, in lieu of review and certification by a Professional Engineer; providing reduced secondary containment requirements (without making individual impracticability determinations) for facilities that have certain types of oil-filled equipment; providing an exemption for certain vehicle bulk fuel tanks and any ancillary on-board oil-filled operational equipment; and exempting airport mobile refuelers from the specifically sized bulk storage container secondary containment requirements. In addition, the Agency also proposes to remove and reserve certain SPCC requirements for animal fats and vegetable oils; extend the compliance dates for Plan amendment; and proposes a separate extension of the compliance dates for farms. In proposing these changes, EPA is significantly reducing the burden imposed on the regulated community in complying with the SPCC requirements, while still providing protection of human health and the environment.

DATES: Comments must be received on or before [insert 30 days after FR publication].

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

I. Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

II. Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

III. Mail: The mailing address of the docket for this rulemaking is EPA Docket Center (EPA/DC), Docket ID No. OPA-2005-0001, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

The docket number for the proposed rule is OPA-2005-0001. The docket is located in the EPA Docket Center and is available for inspection by appointment only, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. You may make an appointment to view the docket by calling 202-566-0276.

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

Instructions: Direct your comments to Docket ID No. OPA-2005-0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET or regulations.gov. The EPA EDOCKET and the Federal regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you submit an electronic comment, EPA recommends that you

include your name and other contact information in the body of the comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available (i.e., CBI or other information whose disclosure is restricted by a statute). Certain material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket, EPA/DC, EPA West, Room B102, 1303 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202-566-1744, and the telephone number to make an appointment to view the docket is 202-566-0276.

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

SUPPLEMENTARY INFORMATION: This proposed rule would amend the requirements for Spill Prevention, Control, and Countermeasure (SPCC) Plans in 40 CFR part 112. First, the proposal would provide an alternative option for the owner/operator of a facility that meets specific qualifying criteria (hereafter referred to as a "qualified" facility) to self-certify that his/her SPCC Plan complies with 40 CFR part 112, in lieu of the requirement for a Professional Engineer's (PE) review and certification. Second, the proposal would provide an alternative option for the owner/operator of a facility with oil-filled operational equipment that meets specific qualifying criteria (hereafter referred to as "qualified" oil-filled equipment) to prepare a contingency plan and commit resources in lieu of secondary containment for oil-filled equipment without being required to make an individual impracticability determination. Third, the proposal would provide an exemption for motive power containers which include on-board oil containers storing fuel to power motor vehicles and/or ancillary containers mounted on motor vehicles used to facilitate the operation of on-board equipment. Fourth, the proposal would exempt airport mobile refuelers from bulk storage container secondary containment requirements. Fifth, the proposal removes and reserves certain SPCC requirements for animal fats and vegetable oils. Finally, the proposal extends the compliance dates for Plan amendment for all facilities and proposes a separate extension of the compliance dates for farms. The contents of this preamble are:

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I. General Information

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

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

described under §112.7(d). The two exceptions are that facility owners/operators of qualified facilities choosing to self-certify their SPCC Plans would have flexibility with respect to security requirements and container integrity testing.

- EPA proposes that owners and operators of facilities where qualified oil-filled operational equipment is located have the alternative of preparing an oil spill contingency plan and a written commitment of manpower, equipment and materials in lieu of providing secondary containment for qualified oil-filled operational equipment, without having to make an individual impracticability determination as required in §112.7(d). Today's proposal would eliminate the current requirement for an individual impracticability determination for oil-filled operational equipment that meets the following qualifying criteria: 1) the individual oil-filled equipment has a maximum oil storage capacity of 1,320 gallons; 2) it is not oil-filled manufacturing flow-through process equipment; 3) it is located at a facility that had no reportable discharges of oil from oil-filled operational equipment as described in §112.1(b) during the ten years prior to the Plan certification date or, if the facility has been in operation for less than ten years, since becoming subject to the SPCC requirements; and 4) it is located at a facility which has established and documented an inspection and monitoring program for this equipment to detect equipment failure and/or a discharge.
- EPA proposes to exempt from the SPCC rule certain motive power containers. Motive power containers are on-board bulk oil storage containers used solely to power the motor vehicle (i.e., fuel tanks), or ancillary on-board oil-filled operational equipment used solely to facilitate its operation (i.e., hydraulic and lubrication operational oil-filled containers). This exemption would not apply to transfers of fuel or other oil into motive power containers at an otherwise regulated facility. This exemption would not apply to a bulk storage container

mounted on a vehicle for any purpose other than powering the vehicle itself, for example, a tanker truck or refueler. Additionally, this exemption would not apply to oil drilling or workover equipment.

- EPA proposes to exempt airport mobile refuelers from the specifically sized secondary containment requirements for bulk storage containers under §§112.8(c)(2) and (11) of the SPCC rule. Airport mobile refuelers are vehicles found at airports that have onboard bulk storage containers designed for, or used to, store and transport fuel for transfer into or from an aircraft or ground service equipment. The oil-containing cargo tanks on such vehicles would still be considered bulk storage containers; the remaining provisions of §112.8(c) and the general secondary containment requirements of §112.7(c) would still apply to these airport mobile refuelers and the transfers associated with this equipment.
- The Agency proposes to amend the requirements for animal fats and vegetable oils in Subpart C of Part 112 by removing section 112.13 (requirements for onshore oil production facilities), section 112.14 (requirements for onshore oil drilling and workover facilities), and section 112.15 (requirements for offshore oil drilling, production, or workover facilities) because these sections do not apply to facilities that handle, store, or transport animal fats and vegetable oils.
- EPA proposes to extend the compliance dates for farms, while the Agency considers whether the unique nature of this sector warrants differentiated requirements under the SPCC rule and provides a six-month extension for Plan amendment for all facilities.

II. Entities Potentially Affected by This Proposed Rule

Industry Category	NAICS Code
Crop and Animal Production	111-112
Crude Petroleum and Natural Gas Extraction	211
Coal Mining, Non-Metallic Mineral Mining and Quarrying	2121/2123/213114/213116
Electric Power Generation, Transmission, and Distribution	2211
Heavy Construction	234
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Petroleum Bulk Stations and Terminals	42271
Automotive Rental and Leasing	5321
Gasoline Service Stations	447
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Transportation (including Pipelines and Airports), Warehousing, and Marinas	482-486/488112-48819/4883/ 48849/492-493/ 71393
Elementary and Secondary Schools, Colleges	611
Federal, State, Local Government and Military Installations	92
Hospitals/Nursing and Residential Care Facilities	621-623

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

III. Statutory Authority and Delegation of Authority

Section 311(j)(1)(C) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1321(j)(1)(C), requires the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and facilities and to contain such discharges. The President delegated the authority to regulate non-transportation-related onshore facilities to the EPA in Executive Order 11548 (35 FR 11677, July 22, 1970), which has been replaced by Executive Order 12777 (56 FR 54757, October 22, 1991). A Memorandum of Understanding (MOU) between the U.S. Department of Transportation (DOT) and EPA (36 FR 24080, November 24, 1971) established the definitions of transportation- and non-transportation-related facilities. An MOU among EPA, the U.S. Department of Interior (DOI), and DOT, effective February 3, 1994, has redelegated the responsibility to regulate certain offshore facilities from DOI to EPA.

IV. Background

On July 17, 2002, EPA published a final rule amending the Oil Pollution Prevention regulation (40 CFR part 112) promulgated under the authority of section 311(j) of the CWA. This revised rule included requirements for SPCC Plans and for Facility Response Plans (FRPs). It also included new subparts outlining the requirements for various classes of oil; revised the applicability of the regulation; amended the requirements for completing SPCC Plans; and made other modifications (67 FR 47042). The revised rule became effective on August 16, 2002. After publication of this rule, several members of the regulated community filed legal challenges to certain aspects of the rule. Most of the issues raised in the litigation

have been settled, following which EPA published clarifications in the Federal Register to several aspects of the revised rule (69 FR 29728, May 25, 2004).¹

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

On September 20, 2004, EPA published two Notices of Data Availability (NODAs). The first NODA made available and solicited comments on submissions to EPA suggesting more focused requirements for facilities subject to the SPCC rule that handle oil below a certain threshold amount, referred to as “certain facilities” (69 FR 56182). Streamlined approaches for facilities with oil capacities below a certain threshold were discussed in the NODA documents. The second NODA made available and solicited comments whether alternate regulatory requirements would be appropriate for facilities with oil-filled and process equipment (69 FR 56184). EPA has reviewed the public comments and data submitted in response to the NODAs in developing today’s proposal.

¹PLACEHOLDER FOR OGC: Footnote that identifies the remaining issue in litigation and current status

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

Regulated community members in the aviation sector have expressed concern that requiring such sized secondary containment for airport mobile refuelers is not practicable for safety and security reasons. (Included in the Docket for today's proposal are the letters that have been submitted to EPA regarding this matter.) Specifically, it has been argued that to require these refuelers to park in specially designed secondary containment areas located within an airport's aircraft operations area could create a safety and security hazard because it would require grouping of the vehicles or place impediments in the operations area. Additionally, requiring mobile refuelers to return to containment areas located within the airport's tank farm between refueling operations may increase the risk of accidents (and therefore accidental oil discharge), as the vehicles would travel with increased frequency through the busy aircraft operations area. EPA is sympathetic to these concerns and seeks to provide relief from the sized bulk storage secondary containment requirements for airport mobile refuelers. At the same time, these refuelers remain subject to the general secondary containment requirements under §112.7(c) which also applies to the transfers of oil associated with airport mobile refuelers.

In contrast to a mobile or portable bulk storage container such as a mobile refueler, a “motive power container” is an integral part of a motor vehicle (including aircraft), providing fuel for propulsion or providing some other operational function, such as lubrication of moving parts or for operation of on-board hydraulic equipment. Motive power containers on vehicles used solely at non-transportation related facilities fall under EPA jurisdiction and are subject to the SPCC regulation.

While the concept of “motive power” is not directly addressed in the SPCC regulation, such vehicle fuel containers fall under either the definition of “bulk storage container” in §112.2, or lubricant containers may be considered oil-filled operational equipment. Therefore, motive power containers which store oil used for the propulsion of a vehicle are subject to all the requirements under §112.8(c) if they have a capacity of 55 gallons or more. These requirements include sized secondary containment, integrity testing (visual plus non-destructive testing), and a requirement to engineer containers to avoid discharges (such as an overfill alarm). Additionally, any oil-filled operational equipment with a capacity of 55 gallons or more mounted on a vehicle would have to comply with the general SPCC containment requirements listed in 40 CFR part 112.7(c).

EPA recognizes that, in most cases, the requirements of §112.8(c), including sized secondary containment and general containment requirements under §112.7(c), are not practicable for motive power containers. It has never been EPA’s intent to regulate bulk oil storage containers used solely to fuel the propulsion of motor vehicles, or the associated oil-filled operational equipment used to assist in the operation of vehicles. Examples of motive power vehicles include, but are not limited to, buses, recreational vehicles, sport utility vehicles, construction vehicles, aircraft, and farm equipment. Examples of facilities or locations that may be covered by the SPCC requirements solely because of the presence of

motive power containers include, but are not limited to, heavy equipment dealers, commercial truck dealers, and parking lots. Therefore, EPA is exempting such motive power containers from the SPCC regulation.

Finally, in the July 17, 2002 final SPCC rule, the Agency promulgated general requirements for SPCC Plans for all facilities and all types of oil in §112.7. In response to the Edible Oil Regulatory Reform Act (EORRA), EPA promulgated separate subparts in part 112 for facilities storing or using various classes of oil, but the requirements in each subpart are the same. EORRA required most Federal agencies to differentiate between and establish separate classes for various types of oil, specifically, between animal fats and oils and greases, and fish and marine mammal oils and oils of vegetable origin, including oils from seeds, nuts, and kernels; and other oils and greases, including petroleum. The result of this approach was that the new Subpart C included requirements for animal fat and vegetable oil (AFVO) facilities – onshore facilities (excluding production facilities) (§112.12), onshore oil production facilities, (§112.14) onshore oil drilling and workover facilities (§112.13), and requirements for offshore oil drilling, production, or workover facilities (§112.15). While the Agency recognized that some of these requirements are not applicable to facilities that handle, store or transport AFVO, these sections were promulgated because the Agency had not proposed differentiated SPCC requirements for public notice and comment. As a result, the current requirements for petroleum oils were also applied to animal fats and vegetable oils. EPA is today proposing to remove those sections from the SPCC requirements that are not applicable or appropriate to animal fats and vegetable oils.

V. Today's Action

A. Qualified Facilities

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

1. Eligibility Criteria

a. Total Facility Oil Storage Capacity Threshold

EPA proposes to limit qualified facilities to a total maximum capacity of 10,000 gallons of oil. EPA considered many different factors before selecting this capacity. EPA found that 10,000 gallons has been used as a threshold in several other rules relating to oil discharges. This threshold quantity is used in the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan or NCP) to classify oil discharges based on the location and size of the discharge (see 40 CFR 300.5). The NCP refers to discharges greater than 10,000 gallons to inland waters as “major,” while other thresholds are used to classify “minor” and “medium” discharges. The classes are provided as guidance to the On-Scene Coordinator (OSC), and serve as criteria for the actions delineated in the NCP. It is important to note, however, that the NCP quantitative thresholds are only provided to help the OSC determine response action, and do not imply associated degrees of hazard to the public health or welfare, or environmental damage. The NCP size classes nevertheless define an oil discharge to inland waters exceeding 10,000 gallons as a major discharge.

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

State regulations also provide support for the use of a 10,000-gallon threshold. A number of states differentiate regulatory requirements based on a facility's total storage capacity, with some states specifying a 10,000-gallon threshold. For example, Maryland requires that all

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

Finally, 10,000 gallons is a common storage tank size, and EPA believes that setting a maximum capacity at 10,000 gallons would address the concerns that smaller facilities have raised. In fact, the Small Business Administration suggested that a 10,000-gallon threshold is a reasonable volume to address the concerns of facilities with relatively smaller volumes of oil. The alternative thresholds generally concerned different sectors. The Agency seeks comments on whether this threshold appropriately addresses the concerns of facilities with relatively smaller volumes of oil, while maintaining the environmental protection intended by the regulation. If commenters suggest alternative volume thresholds, it will be important for the comments to also include a justification for such volume in order for the Agency to adequately consider the comments submitted. This data would be useful in final rule deliberations.

While EPA recognizes that a discharge of less than 10,000 gallons can be harmful, regardless of how the NCP defines "major discharge," EPA believes that it is reasonable to allow facilities with a capacity of no more than 10,000 gallons to prepare and implement a Plan that complies with the SPCC rule requirements and provides adequate protection against discharges without the involvement of a PE. These facilities generally have less complex operations and petroleum system configurations, and smaller oil storage capacities than other

types of facilities subject to the SPCC requirements. Thus, the Agency believes that an owner or operator at these facilities should be able to comply with the SPCC rule provisions without review and certification of the SPCC Plan by a PE, and that simplifying the rule will improve compliance.

b. Reportable Discharge History

EPA proposes that a qualified facility subject to the SPCC requirements must have no reportable oil discharges as described in 40 CFR part 110 (which is analogous to a discharge as described in §112.1(b)) during the ten years prior to self-certification or since becoming subject to the SPCC requirements, whichever is less. Facilities that have been subject to SPCC for less than ten years, including new facilities, would need to demonstrate no discharges as described in §112.1(b) only for the period they have been subject to SPCC. This criterion is based on a proposal regarding oil-filled electrical equipment submitted by the Utility Solid Waste Activities Group (USWAG), as described in the documents supplementing the September 20, 2004, Notice of Data Availability (NODA) at 69 FR 56184. In its proposal, USWAG recognized that facilities that pose a risk, in terms of oil discharges in quantities that are harmful (reportable under 40 CFR part 110), should not be granted relief. USWAG specifically proposed a 10-year spill history as a potential criterion to be eligible for relief. In general, NODA commenters expressed strong support for the USWAG proposal. As in the case of oil-filled operational equipment, the Agency believes that a clean spill history is a suitable criterion for demonstrating eligibility for Plan self-certification, while still effectively maintaining good prevention practices.

Part 110 defines a discharge of oil in such quantities that may be harmful to the public health, welfare, or the environment of the United States as a discharge of oil that violates

applicable water quality standards; a discharge of oil that causes a film or sheen upon the surface of the water or on adjoining shorelines; or a discharge of oil that causes a sludge or emulsion to be deposited beneath the surface of the water or adjoining shorelines (40 CFR 110.3). The Agency refers to such discharges in section §112.1(b) of the rule. Any person in charge of a facility must report any such discharge of oil from the facility to the National Response Center (NRC) at 1-800-424-8802 immediately. While EPA recognizes that past release history does not necessarily translate into a predictor of future performance, the Agency believes that discharge history is a reasonable indicator of a facility's need to plan and implement discharge prevention and control measures. Hence, EPA proposes to use a facility's discharge history as a qualification criterion indicating the facility's ability to effectively develop and implement its SPCC Plan. By establishing a good oil spill prevention history, a facility qualifies for the self-certification option offered in this proposal.

The Agency requests comments on the appropriateness of this criterion for determining the qualification of a facility for the self-certification option, and whether there are other indicators of a facility's effective implementation of the oil pollution prevention requirements under part 112 that should be considered. In addition, the Agency also requests comments on the proposed 10-year period for which facilities would be required to have had no reportable discharges in order to meet this qualification. The Agency requests that any alternative time period suggested include appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

2. Proposed Requirements for Qualified Facilities

a. Self-Certification and Plan Amendments

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

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

period to submit information to the EPA Regional Administrator (RA) within 60 days of the date of the discharge. As per §112.4(d), the RA may require the facility to amend its SPCC Plan in order to prevent and contain discharges, and the RA could require a facility to obtain PE-certification of its SPCC Plan. In addition, a discharge of oil under 40 CFR part 110 that does not trigger the reporting requirements of §112.4(a) must still be reported to the National Response Center. Criminal action can be taken against an owner or operator of a facility if discharges are not reported. EPA also receives copies of the NRC reports and has the authority under §112.1(f) to require a facility to prepare and implement an SPCC Plan or any applicable part of a Plan.

As is the case with a PE-certified Plan, under today's proposed action, the RA could require a qualified facility to amend its Plan if he finds that it does not meet the requirements of 40 CFR part 112 or that an amendment is necessary to prevent and contain discharges from that facility. The RA could determine that the facility no longer qualifies for self-certification and must have a PE-certified Plan. The time frame for this review and amendment process is described in §112.4. The facility may choose to appeal the RA's decision to require a Plan amendment under §112.4. The RA also has authority to require preparation and implementation of a Plan or applicable part of a Plan under §112.1(f).

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

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

b. Environmental Equivalence and Impracticability Determinations

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

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

Today's proposed amendment would allow qualified facilities to opt out of the PE certification, but would not allow facilities that take advantage of this option to include environmentally equivalent measures in their SPCC Plans pursuant to §112.7(a)(2), except in two areas - security and container integrity testing. EPA is proposing this limitation on qualified facilities because EPA believes that in general, without the advantage of the expertise and knowledge that a PE brings to the development of an SPCC Plan, deviations based on environmental equivalence may not be adequate. As discussed below in section V.A.2.c. of the preamble, EPA is proposing two exceptions to this proposed limitation on the use of "environmental equivalence" by proposing flexibility for two specific Plan requirements that

EPA believes may be appropriate for at least some owners of qualified facilities, without employing PE expertise. EPA is also proposing that qualified facilities be precluded from claiming impracticability and using contingency planning in lieu of secondary containment. EPA believes that a PE's knowledge and expertise is needed for appropriate contingency planning and other measures that must be put in place in the absence of secondary containment. Thus, requiring qualified facilities that opt out of PE certification to adhere to the current set of requirements would maintain the same standard of environmental protection provided in the existing rule.

Today's proposal would not preclude a qualified facility from choosing environmentally equivalent measures or from demonstrating impracticability with respect to secondary containment requirements, although the qualified facility would need to comply with the current SPCC requirements (including the PE certification) in order to utilize the flexibility offered by PE-developed impracticability claims and environmentally equivalent measures. In some circumstances, it may be more cost effective for a PE to prepare an SPCC Plan which utilizes environmentally equivalent measures or contingency planning, than for the owner/operator to comply with the SPCC provisions as outlined in the rule. Also, facilities with unconventional operations which qualify for this alternative may find that the current rule requirement for PE certification offers a more cost-effective method of achieving compliance because it provides additional flexibility through performance based provisions. The Agency requests comments on the appropriateness of restricting the use of impracticability and environmental equivalency claims by those qualified facilities that choose the option of self-certification in order to ensure an adequate level of environmental protection. Any alternative approach presented must include appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

c. SPCC Plan Exceptions

As previously explained, the environmental equivalence provision currently in the regulation allows a facility to have flexibility in how it develops and implements its SPCC Plan. This provision was established to allow a PE to make site-specific determinations for a facility's SPCC Plan that would be best suited to each individual circumstance. Today's proposal for self-certification of qualified facilities would preclude the use of alternative environmentally equivalent measures for qualified facilities that elect to develop their SPCC Plan without the services of a PE. The Agency's concern is that these facilities would no longer have a trained professional, with knowledge to make equivalence determinations, reviewing and certifying their Plan. However, EPA recognizes that some of the prescriptive provisions in the current regulatory requirements may prove difficult for some qualified facilities to meet.

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

EPA recognizes that there is no one single approach to ensure proper facility security. For example, the security requirements of fencing and lighting may not always be appropriate for sites such as a national, state or local park subject to SPCC, where the site layout may be too extensive to fence, and where perhaps the lighting of a solitary field tank would invite, rather

than detract, would-be intruders. Qualified facilities, in lieu of the requirements under §112(7)(g) of this part, may prepare a security plan that describes how the facility controls access to the oil handling, processing and storage areas; secures master flow and drain valves; prevents unauthorized access to starter controls on oil pumps; secures out-of-service and loading/unloading connections of oil pipelines; prevents acts of vandalism; and assists in the discovery of oil discharges. (Note that the security requirements in §112.7(g) do not apply to production facilities.)

Today's proposal would allow a qualified facility to develop a general security plan that provides equivalent environmental protection to the requirements in §112.7(g). The Agency recognizes that these security provisions can be approached differently by the variety of facilities that would qualify for self-certification under today's proposal. It should be noted that this is an option and a qualified facility in compliance with the current requirements under §112(7)(g) would not be required to develop a security plan under the proposed §112(3)(g).

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

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

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

The Agency is also proposing to provide flexibility in the area of integrity testing for qualified facilities. The Agency will continue to rely on the appropriate use of industry standards by owners and operators. As EPA stated in its May 2004 letter to the Petroleum Marketers Association of America [available at http://www.epa.gov/oilspill/pdfs/PMAA_letter.pdf], the Agency recognizes that in certain site-specific circumstances, visual inspection may be appropriate for compliance with integrity testing requirement. The Agency expects that the evaluation of the appropriateness of inspections/testing in meeting the current rule's and today's proposed integrity testing requirements will be based on inspection standards such as the Steel Tank Institute (STI) SP001, American Petroleum Institute (API) Standard 653 and API Recommended Practice 12-R, which address the scope of the inspector qualifications and scope/frequency of the testing/inspections. Thus, in effect, the Agency is proposing to allow owners and operators of qualified facilities to consult industry standards or qualified container inspectors/testing personnel to determine the appropriate qualifications for tank inspectors/testing personnel and

the type/frequency of integrity testing required for a particular container size and configuration. The Agency is allowing this determination to be made without the need to develop a PE-approved environmentally equivalent deviation, as is currently required under §112.7(a)(2) for facilities that would not self-certify their Plans. The Agency believes that allowing this flexibility for qualified facilities would increase compliance and thus environmental protection.

At this time, EPA is aware that a number of industry standards are changing. Nevertheless, the Agency believes that it may be appropriate to allow the flexibility of alternative integrity testing methods for these qualified facilities to be consistent with relevant industry standards. For example, visual inspections may be appropriate for the lower volume shop-built containers in certain configurations that are likely to be present at most of these qualified facilities. In the absence of the an environmental equivalency provision that would allow an alternative integrity testing method for qualified facilities, the owner or operator would be required to perform visual inspections plus non-destructive testing on all classes of containers, regardless of size and configuration. Qualified facilities would have to bear the additional cost and burden of conducting non-destructive testing that may not be necessary under industry standards. The Agency continues to strongly recommend that facilities, qualified for self-certification or otherwise, utilize industry standards that are appropriate to their particular tank configurations in developing and conducting tank inspection and testing programs and when determining inspector/testing personnel qualifications.

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

3. Alternative Options Considered

EPA considered other options to streamline the requirements for facilities with oil capacity below a certain threshold. These options included 1) administrative approaches such as providing another extension of deadlines or a suspension of all SPCC requirements; and 2) a multi-tiered structure of requirements based on a facility's total regulated storage based on the Small Business Administration (SBA) proposal described in the Certain Facilities NODA published last year. The Agency also considered an alternative to the option proposed today that would include a one time notification to the EPA for qualified facilities that, because of the time they have been in operation or subject to the SPCC requirements, could not show a ten-year clean spill history as a qualifier. All of these options would apply to a defined set of "qualified facilities".

a. Administrative Options

Two administrative options were considered: a compliance date extension and a suspension of all requirements. Both options would apply to a defined universe of "qualified" SPCC-regulated facilities. A proposed extension would provide an undetermined future date for compliance with the rule. As in past extensions, all facilities that should have had a Plan as of August 16, 2002 would be required to be in compliance with the pre-2002 SPCC requirements during the interim period, including those that could potentially take advantage of today's qualified facilities proposal. A suspension of requirements for qualified facilities would provide relief for the affected universe until EPA takes further action. EPA would need to specify which SPCC requirements would fall under the suspension.

Both of these administrative options would allow EPA more time to decide how to regulate qualified facilities without delaying compliance for the entire universe of SPCC-regulated facilities. However, under both of these options, owners or operators of qualified facilities would remain uncertain about the timing and type of future requirements that would apply to them. The preferred option would set forth explicit requirements for qualified facilities that reduce compliance costs within the current compliance date schedule.

The administrative options also would pose additional problems related to implementation and environmental protection. An extension would not explain what qualified facilities that should have had a Plan as of August 16, 2002, but currently do not have one, must do to “maintain a Plan” during the extension period. A suspension would increase environmental risks from potential discharges at qualified facilities during the interim period, if they delay compliance with the SPCC rule. A similar situation would occur under the extension option for facilities that begin operation after August 16, 2002. Consequently, the Agency rejected these options.

b. Multi-tiered Structure

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

- Tier I would include facilities that handle between 1,321 and 5,000 gallons of oil (total storage capacity). These facilities would not need a written SPCC Plan (and therefore no PE certification would be needed), but would have to adhere to all other SPCC requirements.
- Tier II would include facilities handling between 5,001 and 10,000 gallons of oil (total storage capacity). These facilities would be required to have a written SPCC Plan, but the Plan would not need to be certified by a PE, and a PE site visit would not be required. Standardized plans could be adopted by a facility conforming to standard design and operating procedures, without requiring PE certification.
- Tier III would include the remaining SPCC-regulated facilities (total storage capacity greater than 10,000 gallons). These facilities would be required to have a written SPCC Plan certified by a PE, as currently required by the 2002 revised SPCC rule.

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

This approach would provide different levels of regulatory relief based on total oil storage capacity alone, basing degree of risk on the surrogate measure facility size. Many commenters on the NODA supported this approach, which would reduce compliance costs by eliminating the PE certification requirement for facilities under 10,000 gallons. EPA does not support this approach because it poses significant implementation problems. In particular, the Agency believes that without the owner/operator developing a Plan or documentation on how the facility will comply or expects to comply with the SPCC requirements, it will be challenging for the facility to both meet the substantive requirements (for example, spill notification, response and preparedness planning, equipment maintenance, inspection and training, secondary containment) as well as provide documentation to the regulators that the facility is in compliance. Additionally, EPA inspectors conducting site visits would have no written Plan or documentation to assess the facility's effectiveness in implementing its spill prevention strategy. This would put both the facility and EPA in a difficult position and one that we believe would not be in anyone's interest. While this option was supported by commenters at the conceptual level, if fully explained what the option meant, we believe that many of these commenters would have raised many questions. Nevertheless, the Agency solicits comment on this approach.

c. One-time Notification

The Agency recognizes that some facilities otherwise qualifying for owner/operator self-certification will have been in existence for fewer than ten years and will consequently be unable to demonstrate ten years without a discharge as described in §112.1(b). Some of these facilities will have come into existence after August 16, 2002, and will not have been subject to SPCC regulation until August 18, 2006; some will be new facilities beginning operation after that date. EPA agrees with the USWAG comments that a compliant discharge

history of ten years or more provides a higher degree of assurance of continuing compliance than a history of ten years or less. This is particularly true when comparing ten-year compliant facilities to otherwise qualified facilities which began operations after August 16, 2002, and whose owners or operators, to date, have not been subject to the requirements of the SPCC program, as well as startup facilities without any operating history. EPA considered whether owners or operators of newer facilities that do not have 10 years of compliance and operation without a discharge should be required to provide a one-time notification to the Agency. This notification would be submitted to the Administrator within 30 days of self-certifying a facility's SPCC Plan and would include the following information: 1) name of the facility owner/operator; 2) mailing address of the facility owner/operator; 3) type of business conducted at the facility that is subject to the requirements of this part; 4) above-ground capacity of the facility; 5) location of the facility by street address or, if there is no street address, by longitude and latitude; and 6) year the facility began operations. These notices could be provided by either regular or electronic mail. The Agency would have the opportunity to provide some basic SPCC outreach and educational support to these owners and operators who, while otherwise demonstrating the prerequisites for self-certification, are unable to demonstrate 10 years without a discharge as described in §112.1(b). This one-time notification requirement, if adopted, would modify today's proposed qualified facilities option.

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

B. Qualified Oil-filled Operational Equipment

EPA proposes to amend the Oil Pollution Prevention regulation (40 CFR part 112) to provide an optional alternative to secondary containment for oil-filled operational equipment that meets qualifying criteria (hereafter referred to as “qualified oil-filled operational equipment”). The proposal would allow owners and operators of facilities to prepare an oil spill contingency plan and a written commitment of manpower, equipment and materials to expeditiously control and remove any oil discharged that may be harmful, in lieu of secondary containment for the qualified oil-filled operational equipment, without having to make an individual impracticability determination as required in §112.7(d).

EPA proposes to add §112.7(k) to define the SPCC eligibility criteria that oil-filled operational equipment must meet in order to be considered qualified oil-filled operational equipment. The qualified oil-filled operational equipment criteria are: 1) the individual oil-filled equipment has an oil storage capacity of 1,320 gallons or less; 2) it is not oil-filled manufacturing flow-through process equipment; and 3) it is located at a facility that had no reportable discharges of oil from oil-filled operational equipment as described in §112.1(b) in the ten years prior to the SPCC Plan certification date, or since the facility became subject to 40 CFR part 112 if it has been in operation for less than ten years.

This proposed action would provide an alternative means of SPCC compliance for this equipment; therefore, a facility with qualified oil-filled operational equipment could choose to follow the current SPCC requirements to provide secondary containment in accordance with §112.7(c) for this equipment if desired. For example, oil-filled operational equipment at electrical substations is often surrounded by a gravel bed, which serves as a passive fire quench system and support for the facility grounding network and can provide a restriction to movement of any oil that may be released. Gravel beds, if designed to prevent a discharge as

described in §112.1(b) (i.e. without french drains or other drainage systems that may serve as a conduit to surface waters) may meet the general secondary containment requirements of §112.7(c). EPA further notes that facilities with oil-filled operational equipment located within buildings with limited drainage, which prevents a discharge as described in §112.1(b), may already meet the requirements for general secondary containment of §112.7(c). If so, a contingency plan for this equipment is not necessary. Ultimately, this would be a decision of the owner and/or operator.

Examples of oil-filled operational equipment include, but are not limited to, hydraulic systems, lubricating systems (including lubricating systems for pumps, compressors and other rotating equipment), gear boxes, machining coolant systems, heat transfer systems, transformers, other electrical equipment, and other systems containing oil to enable operation. EPA believes that secondary containment is often impracticable for oil-filled operational equipment due to its design and configuration. The oil associated with oil-filled operational equipment remains inside the equipment and transfers do not occur regularly. Operational equipment is designed, constructed, and maintained according to specifications for its particular operation and construction materials are corrosion-resistant. The complexity of the equipment and the nature of the use of this equipment may not lend itself to traditional bulk storage containment methods and thus flexibility is appropriate in this area and may improve compliance with oil pollution prevention measures.

Furthermore, operational equipment is frequently monitored by employees tending to the operation, and discharges of oil would be noticed quickly. For many types of operational equipment, particularly electrical equipment, releases of oil rapidly decrease functionality of the equipment – for electrical equipment, loss of dielectric fluid leads to equipment failure and an interruption of electric power transmission. The need for equipment reliability assures prompt

detection of releases of oil, enhancing the probability of a prompt response action. Therefore, with today's proposal for qualified oil-filled operational equipment, EPA would allow a facility owner and operator to prepare a contingency plan and a written commitment of manpower, equipment, and materials to expeditiously control and remove oil discharged, in lieu of secondary containment without making an impracticability determination under §112.7(d). EPA believes that this streamlined approach is appropriate for the equipment that meets the specified criteria.

1. Eligibility Criteria

a. Oil-Filled Operational Equipment Storage Capacity

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

Though there are times when general secondary containment is achievable for oil-filled operational equipment, the Agency agreed to continue to evaluate whether the general secondary containment requirements found in §112.7(c) should be modified for small electrical and other types of equipment which use oil for operating purposes. On September 20, 2004, EPA published a NODA which made available and solicited comments on submissions to EPA suggesting that alternate regulatory requirements for facilities with oil-filled and process

equipment would be appropriate (69 FR 56184). EPA has reviewed the public comments and data submitted in response to this NODA and presents today's action in accordance with our intention to consider alternative containment options for smaller electrical and operational equipment.

EPA proposes a maximum storage capacity for qualified oil-filled operational equipment of 1,320 gallons per item of equipment. In deciding to propose an oil storage capacity of 1,320 gallons or less as a maximum, EPA considered the current SPCC rule threshold for aboveground storage capacity. Additionally, the 1,320 gallon threshold was offered as a potential consideration in tiering SPCC rule requirements in an industry proposal submitted by the Utility Solid Waste Activities Group (USWAG). This proposal was made available in the NODA regarding oil-filled and process equipment and received strong support by the majority of commenters on the NODA.

In reviewing data submitted in response to the NODA, the Agency determined that the burden-reduction impact of the 1,320 gallon threshold would be considerable. Setting the oil storage capacity at this threshold would affect approximately two thirds of the electrical equipment universe, according to correspondence from USWAG. Additionally, other commenters indicated that approximately 80% of the electrical equipment universe would fall under this storage capacity threshold. Specifically, information from one commenter representing a large domestic utility revealed that 83% of their electrical equipment contains less than 1,320 gallons of oil. Another commenter representing a large aircraft manufacturer, indicated that over 80% of their electrical and hydraulic equipment contains less than 1,320 gallons of oil.

In developing this proposed threshold, EPA elected to use the electrical equipment universe data in conjunction with comments regarding the oil storage capacity for other types of small oil-filled equipment. Commenters suggested that where sites include a combination of electrical and other oil-filled equipment, again, approximately 80% of this oil-filled operational equipment falls under the 1,320-gallon threshold. As a result, EPA decided to set the threshold for today's proposal at an oil storage capacity of 1,320 gallons.

Facilities with oil-filled operational equipment below 1,320 gallons of oil have minimal oil throughput because fewer oil transfers are associated with this equipment. Further, like cooling or lubricating oils, the oil is intrinsic to the operation of the device and facilitates the function of the equipment. Oil-filled operational equipment is not subject to frequent transfers of oil into or from its containers and are often subject to routine maintenance and inspections to ensure proper operation. While larger oil-filled operational equipment shares similar design and configurations with equipment with oil storage capacity less than or equal to 1,320 gallons, larger oil-filled operational equipment has the inherent potential to discharge larger quantities of oil that may be harmful. EPA believes that an owner/operator of a facility with larger oil-filled operational equipment should conduct an assessment of the facility's capability to provide general secondary containment in accordance with §112.7(c). Thus, EPA decided to limit the relief provided in today's proposal to oil-filled operational equipment with oil storage capacity less than or equal to 1,320 gallons. Additionally, it should be noted that the use of a contingency plan does not relieve the owner/operator of liability associated with an oil discharge to navigable waters or adjoining shorelines that violates the provisions of 40 CFR part 110.

The Agency seeks comments on whether the proposed threshold achieves an appropriate balance of facility burden and environmental protection for small oil-filled operational

equipment. Any available data specific to either the capacity or size distribution of small oil-filled operational equipment in an industry would be useful in Agency deliberations for final rulemaking. Any alternative approach presented must include appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

b. Reportable Discharge History

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

40 CFR §110.3 defines a discharge of oil "in such quantities that may be harmful" to the public health, welfare, or the environment of the United States as a discharge of oil that violates applicable water quality standards; a discharge of oil that causes a film or sheen upon the surface of the water or adjoining shorelines; or a discharge of oil that causes a sludge or emulsion to be deposited beneath the surface of the water or adjoining shorelines. The Agency refers to such discharges in §112.1(b) of the rule. Any person in charge of a facility must report any such discharge of oil from the facility to the National Response Center (NRC) at 1-800-424-8802 immediately. While EPA recognizes that past discharge history does not

necessarily predict future performance, the Agency believes that discharge history can be used as a surrogate measure for a facility's ability to appropriately manage its oil. Hence, as with the "qualified facilities" proposal, EPA proposes to use this discharge history criterion to identify a facility's ability to effectively implement its SPCC Plan and prevent discharges in quantities that may be harmful. In establishing a good oil spill prevention history, a facility then qualifies for the oil spill contingency plan option offered in this proposal.

The Agency requests comments on the appropriateness of this criterion for determining the qualifications of a facility with oil-filled operational equipment for this alternative, and whether there are other measures of a facility's effective implementation of the oil pollution prevention requirements for oil-filled operational equipment under 40 CFR part 112 that should be considered. In addition, the Agency also requests comments on the proposed 10-year period by which facilities can meet the discharge history criterion. Any alternative time periods suggested must include appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

c. Oil-Filled Manufacturing Flow-Through Process Equipment Exclusion

As proposed today, oil-filled manufacturing flow-through process equipment would not qualify for this alternative. The Agency defines flow-through process equipment as a subset of manufacturing equipment (which is considered oil-filled equipment) and under the current rule, is not considered a bulk storage container. However, oil-filled manufacturing flow-through process equipment is inherently more complicated than oil-filled operational equipment because it is typically interconnected through piping, which makes it difficult to calculate the total oil storage capacity. Additionally, oil-filled manufacturing flow-through process equipment receives a continuous source of oil, in contrast to the static capacity of other, non-flow-through

oil-filled equipment. Oil-filled manufacturing flow-through process equipment includes, for example, tanks, vessels, conveyances such as piping, and equipment used in the alteration, processing or refining of crude oil and other non-petroleum oils, including animal fats and vegetable oils. This equipment remains subject to the general SPCC requirements under §112.7, including a demonstration of impracticability under §112.7(d) if the SPCC Plan does not provide for secondary containment as required by §112.7(c). The containers associated with storage of raw products, or the finished oil products are bulk storage containers and are not considered part of the oil-filled manufacturing flow-through process equipment or oil-filled operational equipment, but are rather bulk storage containers. EPA expects the owner or operator to delineate bulk storage containers from the oil-filled manufacturing flow-through process equipment in the facility SPCC Plan for ease of inspection.

2. Proposed Requirements for Qualified Oil-Filled Operational Equipment

a. Contingency Plans In Lieu of Secondary Containment

The regulated community, particularly electrical facilities, identified secondary containment for oil-filled operational equipment as one of its major cost concerns. This sentiment was echoed in the comments submitted in response to the NODAs. With this proposal, the Agency is responding to those concerns by providing targeted relief without compromising on environmental protection. The proposed amendments to §112.7 would give a facility with qualified oil-filled operational equipment the option of implementing an oil spill contingency plan and written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful in lieu of secondary containment for this equipment, without having to make an impracticability determination for each piece of equipment.

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

Since by definition oil-filled operational equipment is not considered a bulk storage container, the facility owner or operator is not required to comply with the bulk storage requirements under §112.8(c) or to conduct both periodic integrity testing of the containers and periodic integrity and leak testing of the valves and piping as described under §112.7(d). However, EPA believes that inspections and monitoring are important when there is no secondary containment in place. Therefore, EPA is proposing to require facilities with qualified oil-filled equipment choosing the proposed alternative to secondary containment to develop and implement an inspection and/or monitoring program, as further discussed in section B.2.b. of this section of the preamble. Since this proposal for qualified oil-filled operational equipment would provide an optional method of SPCC compliance, a facility with such equipment could choose to follow the current SPCC requirements and provide general secondary containment in accordance with §112.7(c) for this equipment if desired. Ultimately, this would be a decision of the owner and/or operator.

Facilities with qualified oil-filled operational equipment that choose the proposed alternative to secondary containment and that subsequently experience a discharge would not automatically lose eligibility for today's proposed relief. However, the Regional Administrator may determine that a facility is no longer eligible to have a contingency plan in lieu of secondary containment without making an impracticability determination, and such facilities may be required to amend their Plans to provide secondary containment for their oil-filled operational equipment. The RA has the authority to require SPCC Plan amendments under §112.4. Section 112.4(a) requires a facility that has discharged more than 1,000 gallons of oil in a single discharge as described in 40 CFR part 110, or that discharged more than 42 gallons of oil in each of two discharges as described in 40 CFR part 110 in any 12-month period to submit information to the RA within 60 days of the date of the discharge. As per §112.4(d), the RA has the authority to require the facility to amend its SPCC Plan in order to prevent and contain discharges, e.g., the RA may require a facility to install secondary containment for oil-filled operational equipment. In addition, a discharge of oil under 40 CFR part 110 that does not trigger the reporting requirements of §112.4(a) must still be reported to the National Response Center. EPA also receives copies of the NRC reports and has the authority under §112.1(f) to require a facility to prepare and implement an SPCC Plan or any applicable part of a Plan. Thus, the RA may require a Plan, partial Plan, or amendments to the Plan to achieve full compliance with the rule, as deemed appropriate to prevent further discharges in quantities that may be harmful.

b. Inspections and Monitoring Program

Facility owners or operators that wish to take advantage of this proposed alternative would be required to develop an appropriate set of procedures for inspections and/or a monitoring program for qualified oil-filled operational equipment. For facilities that rely on contingency

planning in lieu of secondary containment for qualified oil-filled operational equipment, discharge discovery by inspection or monitoring is of paramount importance for effective and timely implementation of the contingency plan. An inspections and/or a monitoring program would ensure that facilities are alerted quickly of equipment failures and/or discharges. A written description of the inspection or monitoring program would be required to be included in the SPCC Plan. Under the existing requirement in §112.7(e), the owner or operator would be required to keep a record of inspections and tests, signed by the appropriate supervisor or inspector, for a period of three years. Records of inspections and tests kept under usual and customary business practices suffice.

While oil-filled operational equipment is not a bulk storage container and is therefore not subject to the frequent visual inspection requirement under §112.8(c)(6), it is good engineering practice to have some form of visual inspection or monitoring for these oil-filled non-bulk storage containers to prevent discharges as described in §112.1(b). Additionally, it is a challenge to comply with several of the SPCC provisions (for example, requirements for security under §112.7(g) and for countermeasures for discharge discovery under §112.7(a)(3)(iv)) without some form of inspection or monitoring program. EPA views inspection and/or monitoring as necessary for effective and timely implementation of the contingency plan alternative to secondary containment. EPA is therefore proposing that discharge discovery by inspection or monitoring be required for those facilities relying on contingency planning in lieu of containment for qualified oil-filled operational equipment.

The Agency requests comments on the appropriateness of this requirement as a qualification for this alternative, and whether there are other measures that a facility could take to ensure that a contingency plan is activated in a timely manner upon equipment failure or

discharge. Any alternative approach presented must include appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

The Agency also requests comments on whether there are other requirements that should be added as qualifiers for facilities with oil-filled operational equipment to be able to use a contingency plan and a written commitment of manpower, equipment and materials in lieu of secondary containment for qualified oil-filled operational equipment. Any alternative approach presented must include appropriate rationale and supporting data in order for the Agency to be able to consider it for final action.

3. Alternative Options Considered

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

a. Multi-tiered Structure

The tiered structure option was considered in response to comments EPA received following publication of a Notice of Data Availability for oil-filled equipment (69 FR 56184, September 20, 2004) and is based on a previous proposal put forth by the Utility Solid Waste Activities Group (USWAG) that focused on electrical equipment. A central element of this

option would allow the facility owner or operator to define each discrete unit of this type of oil-filled equipment as a facility. This option would also establish three tiers for regulated onshore oil-filled electrical equipment based on the storage capacity of the equipment. Equipment with an oil storage capacity of 1,320 gallons or less (Tier 1) would have been exempt from all SPCC requirements. For oil-filled operational equipment with a capacity greater than 1,320 but less than 20,000 gallons and which meet additional qualifying criteria (Tier II), facility owners and operators would have the option of preparing a contingency plan in lieu of an SPCC Plan. Such an approach would have exempted a significant portion of the regulated universe with electrical equipment from the development of an SPCC Plan entirely and instead would only need to develop a contingency plan and a written commitment of manpower, equipment and materials in the event of a discharge. Tier III would require that all other equipment with capacities greater than 20,000 gallons be required to comply with the current SPCC rule.

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

about the definition of a facility could lead to a greater lack of compliance and possibly greater environmental harm.

b. Administrative Options

EPA could propose an extension, similar to the previous extensions already granted, that would apply to oil-filled operational equipment. This action would allow EPA more time to decide how to regulate oil-filled operational equipment without delaying compliance for the entire universe of SPCC-regulated facilities and equipment. However, the extension would be for a yet-to-be-determined length of time, and for an unspecified set of requirements. Facility owners or operators would be uncertain about the timing and scope of requirements that eventually would apply to them. Since so many facilities have oil-filled operational equipment, if changes to these requirements are delayed, a significant number of facilities might have to modify their existing Plans more than once to accommodate future rule changes. As with past extensions, EPA would continue to require that oil-filled operational equipment comply with pre-2002 SPCC requirements during the interim period at facilities that should have had an SPCC Plan as of August 16, 2002, providing no immediate relief. Consequently, EPA rejected this option.

A suspension of all requirements for oil-filled operational equipment would provide immediate relief until further notice and provided EPA with more time to decide how to regulate this equipment. Like the extension option, facility owners or operators with oil-filled operational equipment would be uncertain about the timing and scope of requirements that would apply to them. In addition, the Agency is concerned that this option provides no environmental protection during the time that new requirements are developed. Therefore, EPA rejected this option.

EPA welcomes comments on these or other alternatives that could reduce the burden at facilities with certain oil-filled operational equipment, while maintaining appropriate levels of environmental protection. The Agency is particularly interested in comments on how this option could be applied to oil-filled operational equipment that is co-located or clustered together at discrete sites, such as at an electrical substation or a transformer vault. The Agency is also interested in comments related to the application of the electrical equipment tiered option to other types of oil-filled operational equipment. Any alternative approaches presented must include appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

4. Overlap with Qualified Facilities

a. Qualified Facilities with Qualified Oil-Filled Operational Equipment

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

b. Qualified Facilities with No Qualified Oil-Filled Operational Equipment

Because of the storage capacity limitation, a qualified facility could have oil-filled operational equipment that does not qualify for today's proposed alternative. In the event that an owner or operator of a qualified facility would choose to self-certify the SPCC Plan, the owner/operator would be required to provide secondary containment in accordance with §112.7(c) for the oil-filled operational equipment that does not meet the proposed qualifying criteria of §112.7(k). Since today's proposal provides optional methods of SPCC compliance, a qualified facility with oil-filled operational equipment that would not meet the proposed qualifying criteria could instead choose to have a PE evaluate whether secondary containment is practicable for this equipment pursuant to §112.7(d). Otherwise, the owner/operator could self-certify his/her Plan and provide general secondary containment for this equipment. Ultimately, this would be a decision of the owner and/or operator.

c. Qualified Facilities with Qualified Oil-Filled Operational Equipment and other Oil-Filled Operational Equipment

A qualified facility could also have both qualified oil-filled operational equipment as well as other oil-filled operational equipment that does not meet the proposed qualifying criteria of §112.7(k). If an owner or operator of a qualified facility would choose to self-certify the facility's SPCC Plan and has both types of oil-filled operational equipment, the facility would be required to provide secondary containment in accordance with §112.7(c) for the oil-filled operational equipment that does not qualify for today's proposed alternative, but would be able to have a contingency plan in lieu of secondary containment for the qualified oil-filled operational equipment without making an impracticability determination. Since today's proposal would provide optional methods of SPCC compliance, a qualified facility could instead choose

to hire a PE to assess and certify the flexibility in the SPCC rule regarding impracticability for the oil-filled operational equipment that does not meet the proposed qualifying criteria of §112.7(k). Ultimately, this would be a decision of the owner and/or operator.

C. Motive Power

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

1. Definition of Motive Power

EPA proposes to amend the Oil Pollution Prevention regulation (40 CFR part 112) to exempt motive power containers, defined as “on-board bulk oil storage containers used solely to power the movement of a motor vehicle, or ancillary on-board oil-filled operational

equipment used solely to facilitate its operation.” This definition is intended to describe containers such as the fuel tanks that are used solely to provide fuel for a motor vehicle’s movement or the hydraulic and lubrication operational oil-filled containers used solely for other ancillary functions of a motor vehicle. This definition would not include transfers of fuel or other oil into motive power containers at an otherwise regulated facility, or a bulk storage container mounted on a vehicle for any purpose other than powering the vehicle itself, for example, a tanker truck or refueler. Additionally, this definition would not include oil drilling or workover equipment.

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

2. Proposed Exemption

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

applicable part, if a determination is made that it is necessary in order to prevent a discharge of oil into waters of the United States.

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

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

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

3. Alternative Options Considered

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

a. Equipment-based Motive Power Exemption

EPA could choose to exempt motive power containers, except containers on aircraft and mining equipment, from the requirements of 40 CFR part 112. The majority of motive power containers would be exempt from the SPCC rule. EPA would require that the containers on aircraft and mining equipment be covered because these containers are typically much larger than all other motive power containers and potentially pose a greater threat to the environment in the event of a spill. However, it would be difficult to characterize spills from motive power containers on aircraft and mining equipment as being different than spills from other motive power containers. There is no data available to EPA specific to mining and aircraft equipment spills that would justify this option, and therefore it was rejected.

b. Threshold-based Motive Power Exemption

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

c. Exclusion from Storage Capacity Calculation

EPA could exclude motive power containers from the storage capacity determination at a regulated facility and from the definition of bulk storage container to clarify that these

containers are not counted towards the 1,320 gallon aboveground oil storage threshold for the regulation. Nevertheless, the facility would have to consider these containers in their overall facility SPCC Plan. Although motive power containers would not be considered bulk storage containers, they would be subject to the general requirements of the rule under §112.7, including the provision for secondary containment. The facility SPCC Plan would have to identify the presence of motive power containers on-site, in addition to their reasonable potential for discharge as per §112.7(b). This option is more complex for the regulated community and is not a clear exemption of motive power containers. It would also bring into the SPCC program a number of facilities solely because of their storage or use of motive power containers, such as heavy equipment dealers, commercial truck dealers, and parking lots, to name a few. Therefore, EPA rejected this option.

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

D. Airport Mobile Refuelers

Airport mobile refuelers are vehicles that are used on an airport to refuel aircraft and ground service equipment. Their onboard oil containers used to transport and transfer fuel are considered bulk storage containers under the SPCC rule because they are containers used to store oil prior to use, while being used, or prior to further distribution in commerce. As such,

they are subject to all applicable SPCC rule provisions, including the secondary containment provisions of §112.8(c)(2) (applicable to all bulk storage containers) and §112.8(c)(11) (applicable more specifically to mobile/portable bulk storage containers). These provisions require a secondary means of containment, such as a dike or catchment basin, sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation.

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

EPA is aware that certain airports subject to FAA's regulations at 14 Part 139 require certification by the FAA Administrator or his delegated agent. As part of this certification, the Agency understands that compliance with Uniform Fire Code requirements, among other requirements in Part 139, must be detailed in the Airport Certification Manual to obtain FAA

approval and thus an Airport Operating Certificate per Part 139. The Agency understands that the applicable Uniform Fire Code includes National Fire Protection Association's (NFPA) 30, *Flammable and Combustible Liquids Code*, NFPA 407, *Standard for Aircraft Fuel Servicing and* NFPA 415, *Standard on Airport Terminal Buildings, Fueling Ramp Drainage, and Loading Walkways*. In particular, NFPA 407 requires that aircraft fuel servicing vehicles and carts shall be positioned so that a clear path of egress from the aircraft for fuel servicing vehicles shall be maintained [5.12.1]. Further, in NFPA 415, the code specifically states that in no case shall the design of a drainage system of any aircraft fueling ramp allow fuel to collect on the aircraft fueling ramp or adjacent ground surfaces where it constitute a fire hazard [5.1.4]. As such, EPA believes that subjecting mobile airport refuelers to the sized secondary containment requirements at §§112.8(c)(2) and (11) would directly conflict with the Uniform Fire Code applicable to fuel handling at airports. EPA believes, however, that these bulk storage containers should remain subject to the general secondary containment requirements at §112.7(c) as this provision affords sufficient flexibility to the owner/operator and certifying PE to select a spill prevention method that would not conflict with the applicable Uniform Fire Code. Thus, EPA is proposing to exempt airport mobile refuelers from the sized bulk storage secondary containment requirements for airport mobile refuelers in §§112.8(c)(2) and (11). EPA believes that this exemption is appropriate for airport mobile refuelers, so as not to conflict with the specific Uniform Fire Code requirements for airport fueling activities, while preserving environmental protection, afforded by the spill prevention provisions outlined in §112.7(c). EPA also believes that this clarification for airport mobile refuelers applies to refuelers operating at all airports, both those certified under 14 Part 139 and non-certified airports.

1. Definition of Airport Mobile Refueler

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

2. Proposed Amended Requirements

This proposed amendment would revise §§112.8(c)(2) and (11) to specifically exempt airport mobile refuelers, as defined above, from these provisions. Secondary containment systems sufficient to contain the capacity of the largest single compartment or container with sufficient freeboard to contain precipitation would no longer be required. However, there is a potential for oil discharges as described in §112.1(b) from airport mobile refuelers. Indeed, there are documented cases of reportable discharges from refueling activities at airports. Therefore, the general secondary containment requirements of §112.7(c) would continue to apply to airport mobile refuelers under this proposal. Section 112.7(c) does not prescribe a size for the secondary containment structure but does require appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in §112.1(b). In addition, since airport mobile refuelers are mobile or portable bulk storage containers, the other provisions of §112.8(c) would still apply.

The Agency seeks comments on the proposed definition for “airport mobile refuelers,” the adequacy of general secondary containment requirements for preventing discharges as described in §112.1(b) from airport mobile refuelers, and whether the proposed regulatory relief satisfies the concerns of airport owners and/or operators. Any alternative approaches presented must include appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

E. Animal Fats and Vegetable Oils

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

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

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

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

The Agency has not developed a proposal following the 1999 Advanced Notice of Proposed Rulemaking regarding differentiation of AFVO from petroleum and other oils in the SPCC rule (64 FR 17227). To assist the Agency in its ongoing consideration of this issue, EPA requests suggestions for additional amendments that would differentiate AFVOs from other classes of oils in the SPCC rule and scientific support for those amendments. In particular, EPA is seeking information that specifically addresses the criteria for differentiation set forth in EORRA, 33 U.S.C. §2720(b); that is, differences in the physical, chemical,

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

biological, and other properties, as well as the environmental effects, of various types of oil, in order for the Agency to support a rationale for differentiation of oil spill prevention requirements. The Agency will continue to examine these issues to determine the appropriateness of amendments to the regulatory scheme which differentiate the SPCC requirements for AFVO from the requirements for petroleum and other oils.

VI. Compliance Dates

A. Proposed Extension of Compliance Dates for All Facilities

In order to allow for the rulemaking process started by today's proposal to be completed and to provide the SPCC regulated universe time to determine if they are eligible for any burden relief that may be promulgated in a final rule, we are proposing to extend the compliance date for Plan amendment by six months to coincide with the existing Plan implementation date as provided in §112.3(a), August 18, 2006. Under EPA's planned schedule, the Agency expects to take final action on today's proposal in early 2006. The Agency believes the extension is warranted because today's proposal is expected to affect a large number of the SPCC-regulated universe and we believe such delay is warranted to provide sufficient time to allow for preparation and implementation of an SPCC Plan following publication of the final rule. However, we would note that we are not extending the compliance date for implementation of the rule, which remains at August 18, 2006. The Agency is seeking comment on whether it is appropriate to extend the compliance dates as described above.

B. Proposed Extension of Compliance Dates for Farms

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

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

1. Eligibility Criteria

EPA proposes the 10,000-gallon threshold for farms to be consistent with the threshold quantity used in the NCP to classify oil discharges to inland waters as "major" (40 CFR 300.5). Thus, a facility storing less than 10,000 gallons of oil could not be involved in a major discharge based on the NCP quantitative criterion alone, although use of this numerical criteria is not meant to imply that smaller discharges are not harmful. This same 10,000 gallon-threshold discharge volume is also one factor used in identifying facilities that must prepare and submit a Facility Response Plan (FRP) under §112.20(f)(1). In addition, 10,000 gallons is a common storage capacity and such a threshold would extend the compliance dates for a significant portion of the farm sector. Data provided by the agricultural industry and the U.S. Department of Agriculture indicate that the average aggregated aboveground oil storage capacity at farms surveyed in 2005 was 5,550 gallons; approximately 83 percent of surveyed farms have aggregated oil storage below 10,000 gallons. Farms with less than 1,000 acres had an average oil storage capacity of less than 2,500 gallons; farms with over 1,000 acres had an average oil storage capacity of almost 8,000 gallons. (See "Fuel/Oil Storage and Delivery for Farmers and Cooperatives," USDA, March 2005, in the docket for today's proposal.)

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

EPA also considered the definition it uses to exempt farm tanks under the Underground Storage Tank (UST) regulations at 40 CFR 280. The Resource Conservation and Recovery Act (RCRA) as amended, section 9001(1)(A), exempts farm and residential USTs storing less than 1,100 gallons of motor fuel for “noncommercial” purposes. As defined in 40 CFR 280.12, a farm tank is a tank located on a tract of land devoted to the production of crops or raising of animals, including fish. The preamble to the UST rule explains that the term “farm” includes fish hatcheries, rangeland, and nurseries with growing operations but does not include laboratories where animals are raised, land used to grow timber, and pesticide aviation operations. This term also does not include retail stores or garden centers where the product of nursery farms is marketed, but not produced, nor does EPA interpret the term “farm” to include golf courses or other places dedicated primarily to recreational, aesthetic, or other non-agricultural activities. (53 FR 37082, 37117, September 23, 1988).

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

EPA utilized elements of the UST definition of farm, in combination with the Census definition, in developing today’s proposal. By combining elements of both of these approaches, the Agency believes the proposed definition more specifically targets the intended universe for the extension. EPA seeks comment on the proposed definition for farms, and whether an

alternate definition of “farm” may be more appropriate. Comments may also address the proposed 10,000 gallon threshold for qualifying for the extension, and whether an alternative threshold may be more appropriate. Any alternative approaches presented must include appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

2. Proposed Compliance Date Extension for Farms

With today's action, EPA proposes to extend the compliance dates for the owner or operator of a farm, as now proposed to be defined in §112.2, that has a total storage capacity of 10,000 gallons or less, to amend and implement the farm's SPCC Plan. The Agency proposes to extend the farm compliance dates until EPA completes information collection and analysis to determine if differentiated SPCC requirements may be appropriate for farms. If the Agency determines that differentiated requirements for farms are warranted, the Agency will publish a notice in the Federal Register proposing new compliance dates for eligible farms.

During this extension, EPA would gather information to better understand the unique concerns of the farm sector to determine if differentiated SPCC requirements may be appropriate. EPA believes that an extension is appropriate because of the large and uncertain scope of the agricultural community, the complexity of the issues, the fact that many farms are small, and the time needed to determine how the SPCC requirements should apply, if at all. Since some farms may also qualify to prepare self-certified SPCC Plans as proposed in today's action, EPA will also need to determine the extent to which that option may be appropriate for the owners and operators of farms. EPA seeks comment on whether this extension is warranted, or if a specific time period would be more appropriate.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866 – Regulatory Planning and Review

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

- (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

Under the terms of Executive Order 12866, this action has been judged as a “significant regulatory action” because it raises novel legal or policy issues. Such issues include proposed measures that would relieve affected facility owners and operators of regulatory mandates and could change the manner in which they comply with remaining mandates. Therefore, this action was submitted to OMB for review and the Agency has prepared a regulatory analysis in

support of today's action, titled, "Regulatory Analysis of the Spill Prevention, Control, and Countermeasure Proposed Rule" (August 2005). Changes made in response to OMB suggestions or recommendations will be documented in the public record. EPA requests comments from the public on the costs and benefits of any of the possible regulatory changes discussed in this proposed rulemaking, as well as on appropriate methodologies for assessing them.

1. Summary of Regulatory Analysis

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

a. General Approach

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

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

The analysis then assesses the impacts of the alternative regulatory options that EPA considered. EPA, however, does not have sufficient information to analyze cost savings associated with changes to requirements for airport mobile refuelers, or the impact on farms of a delayed compliance date.

For each of the components, the benefits consist of reductions in social costs accruing from reductions in compliance costs. The main steps used to estimate the compliance cost impacts of the SPCC Proposed Rule are as follows:

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

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

b. Baseline for the Analysis

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

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

This rule does not impact any facilities that are not already required to meet the standards of the SPCC rule. The costs of SPCC requirements were already imposed on the regulated community by prior rulemaking in 1973 and 2002. For the benefit-cost analysis, therefore, EPA is treating these costs as liabilities the regulated entities currently have – whether or not they have actually made the capital expenditures to comply. In this analytical construct, these firms are simply delaying the expenditures for the costs they already carry. Therefore, EPA used as its baseline the requirements under 40 CFR part 112 (“SPCC rule”), as amended in 2002 (67 FR 47042). EPA does recognize, however, that there is probably significant non-compliance with SPCC requirements at present.

c. Description of SPCC-Regulated Universe

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

EPA updated its previous estimates of the number of regulated facilities in 12 industry sectors. In addition, EPA used data from the 2002 Economic Census, the Census of Agriculture, and a variety of other governmental and non-governmental sources to estimate the number of regulated facilities in a large set of industrial and commercial sectors. Data were also adjusted to account for changes in industry size, and to account for exemptions promulgated in the 2002 SPCC rule. Full documentation of the estimates appears in the *Regulatory Analysis* document accompanying this proposal.

In total, EPA estimates that 511,797 facilities are currently regulated under the SPCC rule. Oil production facilities (34 percent), farms (30 percent), electric utility plants (10 percent), and other commercial facilities (10 percent) account for most of the SPCC-regulated facilities. Following is a table that summarizes the estimated number of regulated facilities, by size category:

Category	Aggregate Capacity	Number of Facilities
I	1,321 to 10,000 gallons	261,000
II	10,000 to 42,000 gallons	182,228
III	42,000 to 1 million gallons	71,251
IV	1 million gallons or greater	7,163

2. Qualified Facilities

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

a. Universe of Affected Facilities

As noted above, EPA estimates that approximately 261,000 facilities with storage capacities below 10,000 gallons are subject to SPCC. As with all of the regulatory options considered in developing today's proposed rule, facilities would have the choice of complying with the existing SPCC rule (as amended in 2002) or taking advantage of the proposed change. EPA assumes that facilities would likely choose an alternative requirement if (a) they met the criteria, and (b) it was less costly or otherwise offered greater benefits than the existing requirement. As with the other options being considered today, EPA does not know how many facilities would meet the criteria and choose to avail themselves of the 'Qualified Facility' options. Therefore, EPA examined the impact of the 'Qualified Facility' options under three

scenarios: 25 percent, 50 percent, and 75 percent of category 1 facilities would likely meet 'Qualified Facility' status and decide to implement this approach. EPA estimated that the 65,324 facilities would choose to take advantage of this option under the 25-percent scenario; 130,646 facilities under the 50-percent scenario, and 195,970 facilities under the 75 percent scenario.

b. Compliance Cost Savings

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

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

EPA multiplied burden hour estimates by the hourly wage rates for specific labor categories to determine the per-facility costs associated with the proposed rule's paperwork requirements.

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

The labor wage rates for private industry were derived from the December 2004 U.S. Department of Labor's Employment Cost Indexes and Levels.⁴

EPA estimates that this option could reduce compliance costs by \$15.2 million and \$12.6 million per year, discounted at 3 percent and 7 percent, respectively. To arrive at these estimates, EPA assumed that 50 percent of facilities under 10,000 gallons would qualify for this option. EPA assumed that the proposed flexibility for integrity testing would reduce the unit cost of testing by 50 percent. If 25 percent of facilities under 10,000 gallons qualified for this option, compliance costs would decrease by \$7.62 million and \$6.29 million per year, discounted at 3 percent and 7 percent, respectively. If 75 percent of facilities under 10,000 gallons qualified for this option, compliance costs would reduce by \$22.9 million and \$18.9 million per year, discounted at 3 percent and 7 percent, respectively.

3. Oil-Filled Operational Equipment

Today EPA is proposing to allow owners and operators of facilities featuring certain kinds of oil-filled operational equipment to prepare an oil spill contingency plan and a written commitment of manpower, equipment, and materials in lieu of providing secondary containment without making an individual impracticability determination. The option is limited to equipment holding 1,320 gallons or less of oil.

a. Universe of Affected Facilities

⁴ United States Department of Labor, Bureau of Labor Statistics, Employer Costs for Employee Compensation, June 2004.

EPA assumed that existing facilities regulated by the SPCC rule with qualified oil-filled operational equipment would already have secondary containment or a contingency plan with an impracticability statement. In such cases, facilities would not benefit from this option. Information submitted by the Utility Solid Waste Activities Group (USWAG) as well as comments on the NODA suggest that as much as 75 percent of oil-filled operational equipment are co-located with non-qualified equipment that would be included in the planning and design for secondary containment. In these situations, even new facilities would not benefit from the 'Oil-Filled Operational Equipment' option.

However, other new facilities would likely take advantage of the increased flexibility to use a contingency plan. EPA estimates that 25 percent of new facilities would have qualified equipment that is not co-located with non-qualified equipment, and would incur lower costs by choosing a contingency plan (without an impracticability determination) over secondary containment.

EPA acknowledges that some fraction of new facilities would, in the baseline scenario, decide to prepare a contingency plan and provide an impracticability determination, rather than pursue secondary containment. In these cases, the proposed option's cost savings would be lower, since owners and operators would only be avoiding an impracticability determination rather than secondary containment. EPA does not know what fraction of facilities fall into this situation, and has decided not to incorporate the scenario in the analysis. As a result, EPA's analysis will likely overestimate the cost savings from the proposed option. Any overestimate would be offset by the omission of oil-filled operational equipment outside of electrical equipment at utilities.

The 'Oil-Filled Operational Equipment' options could address such items as hydraulic systems, lubricating systems (including lubricating systems for pumps, compressors and other rotating equipment), gear boxes, machining coolant systems, heat transfer systems, transformers, other electrical equipment, and other systems containing oil to enable operation. Due to data and time limitations, EPA focused its economic analysis on the electric utility sector, which will likely underestimate the total cost savings from the proposed 'Oil-Filled Operational Equipment' option and the alternatives.

Specifically, EPA used data from a survey of utility companies conducted by the Utility Solid Waste Activities Group (USWAG). The survey yielded data on 19 USWAG members. Each respondent reported the number of pieces of oil-filled operational equipment for the following capacity tiers: under 1,320 gallons; 1,320 through 20,000 gallons; and greater than 20,000 gallons. EPA believes that these data represent the best available information at this time.

Respondents also reported their annual electricity sales, which EPA used to estimate the relationship between electricity sales and facilities with oil-filled operational equipment. EPA generated a national estimate of the number of facilities that would benefit from the proposed requirements using the number of electricity-generating substations estimated based on the amount of electricity sold in the United States. EPA estimated that the total number of pieces of oil-filled electrical equipment is 412,000. However, this underestimates the universe of affected pieces of equipment, since it does not include oil-filled operational equipment, nor equipment from other industries.

b. Compliance Cost Savings

EPA estimates the one-time cost of implementing secondary containment requirements at new electrical substations at approximately \$1,500 per stand-alone piece of equipment with oil capacity under 1,320 gallons. The unit cost of providing secondary containment was estimated based on an interview with a specialized engineering firm that provides secondary containment to electrical substations and subsequent comments provided by electric utilities. The cost of providing secondary containment was derived from an SPCC guidance document prepared by the U.S. Navy.⁵ EPA plans to continue research into the cost of secondary containment and may revise its assumptions for the final rule.

EPA estimates that this component of the proposal could reduce compliance costs by \$2.05 million and \$1.68 million per year, discounted at 3 percent and 7 percent, respectively.

EPA calculated cost savings based on the assumption that at new facilities these units would save the difference between the cost of secondary containment and the cost of preparing a contingency plan. The Agency recognizes, however, that some units are co-located with larger units (not eligible for this exemption), and therefore could not save the cost of secondary containment. At some facilities, PE-certified SPCC plans have made a determination that secondary containment is impracticable, and have implemented environmentally equivalent measures. These units would also not see significant cost savings from this component of the current rule. The cost savings estimate presented here, therefore, undercounts the number of units of oil-filled operational equipment (as noted in section 3 a), but overestimates the cost savings for those units that have been counted.

⁵ The estimate ranges from \$200 to \$11,000 depending on the type of secondary containment and tank size. See Appendix A of the U.S. Navy's SPCC Guidance Document, Environmental Department of the Naval Facilities Engineering Service Center, 2003.

4. Motive Power

It is not EPA's intent to regulate bulk oil storage containers in vehicles used solely to fuel the propulsion of those motor vehicles, or the associated oil-filled operational equipment used to assist in the operation of those vehicles. Although EPA has no empirical data on the amount of such storage at facilities regulated by the SPCC rule, EPA does not expect that many facility owners and operators have included motive power in their oil storage capacity calculations and SPCC Plans. For those who have considered motive power storage, EPA assumes that the volume that would be exempt under the proposed rule would not represent a large fraction of the facility's aggregate capacity.

a. Universe of Affected Facilities

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

EPA has no empirical data on the number of facilities with motive power equipment with oil storage of 55 gallons or greater. To estimate the number of facilities affected by the 'Motive

Power' proposed rule, EPA examined three scenarios: 10 percent, 25 percent, and 50 percent of the facilities in sectors with motive power may be affected by the proposed regulatory option. EPA estimated that 2,765 facilities have 'motive power' oil storage under the 10-percent scenario; 6,913 facilities under the 25-percent scenario; and 13,826 facilities under the 50-percent scenario.

b. Compliance Cost Savings

EPA assumed that 10 percent of the facilities in industries identified as having motive power storage might take advantage of the proposed exemption. Other facilities could also have motive power storage, however EPA expects that they have not considered such storage as part of their compliance with the SPCC rule. Because EPA expects most facilities with motive power storage to meet the SPCC rule's oil storage thresholds, regardless of motive power, EPA assumes that the cost savings from the proposed exemption will be modest, with the possibility of saving small amounts of compliance costs, principally for secondary containment for these motive power containers. EPA estimates that the proposed option will reduce compliance costs by \$0.72 million and \$0.60 million per year, discounted at 3 percent and 7 percent, respectively. The main benefit of the proposed option would be to provide greater clarity of EPA's regulatory intent.

EPA also examined two other scenarios: 25 percent and 50 percent of facilities in industries identified as having motive power storage might take advantage of the proposed exemption. Under the 25-percent scenario, compliance costs would be reduced by \$1.81 million and \$1.49 million per year, discounted at 3 percent and 7 percent, respectively. Under the 50-percent scenario, compliance costs would be reduced by \$3.62 million and \$2.98 million, discounted at 3 percent and 7 percent, respectively.

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

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

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

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

6. Alternative Regulatory Options

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

a. Qualified Facilities

As an alternative option, EPA considered a notification requirement for qualified facilities that have been operating for less than ten years, along with eliminating the requirement for PE certification and providing integrity testing flexibility for all qualified facilities. EPA estimates that the alternative option could reduce compliance costs by \$15.1 million and \$12.5 million per year, discounted at 3 percent and 7 percent, respectively. To arrive at these figures, EPA assumed that 50 percent of facilities under 10,000 gallons would qualify for this option. EPA also assumed that the proposed flexibility for integrity testing would reduce the unit cost of testing by 50 percent. EPA assumed that the total burden of notification for a facility would be three hours: one hour of managerial time, one hour of technical time, and one hour of clerical time. If 25 percent of facilities under 10,000 gallons qualified for this option, compliance costs would decrease by \$7.56 million and \$6.24 million per year, discounted at 3 percent and 7 percent, respectively. If 75 percent of facilities under 10,000 gallons qualified for this option, compliance costs would reduce by \$22.7 million and \$18.7 million per year, discounted at 3 percent and 7 percent, respectively. EPA decided not to pursue this option because it does not differ substantively from the proposed option; an additional notification burden was not considered necessary.

As an alternative option, EPA considered establishing three facility-size tiers according to SBA's recommendations based on facility's total oil storage capacity (Jack Faucett Associates,

2004). EPA estimates that this alternative option could reduce compliance costs by \$30.1 million and \$24.8 million per year, discounted at 3 percent and 7 percent, respectively. To arrive at these estimates, EPA assumed that all SPCC-regulated facilities with oil storage capacity between 1,320 and 5,000 gallons would take advantage of the option, eliminating the cost of preparing and maintaining a written SPCC Plan. Additionally, EPA assumed that all SPCC-regulated facilities with oil storage capacity between 5,001 and 10,000 gallons would take advantage of the option and eliminate the cost of PE certification.

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

EPA also considered two administrative options to provide relief to qualified facilities: a compliance date extension and a suspension of all requirements. These options would not have an impact on compliance costs, but would only delay expenditures at affected facilities.

EPA decided against these options because owners or operators of qualified facilities would remain uncertain about the timing and type of future requirements that would apply to them. The preferred option would set forth explicit requirements for qualified facilities that reduce compliance costs within the current compliance date schedule. The administrative options also would pose additional problems related to implementation and environmental protection.

b. Oil-Filled Equipment

EPA explored a three-tiered structure option in response to comments on a NODA for oil-filled equipment (69 FR 56184, September 20, 2004). The option is based on a previous proposal put forth by the Utility Solid Waste Activities Group (USWAG). The option would allow a facility owner or operator to define each discrete unit of equipment as a facility. For facilities that meet the criteria for preparing an SPCC Plan without accounting for oil-filled equipment, this option could actually increase overall compliance costs – given that each discrete unit of equipment with capacities greater than 1,320 gallons would require its own contingency plan or SPCC Plan and would need to meet all other requirements of 40 CFR part 112. Facilities that have significant oil storage in oil-filled operational equipment might incur lower compliance costs under this option if enough pieces of equipment fell under 20,000 gallons to cause the remainder of the facility’s oil storage capacity to come in under 1,320 gallons. Because of the lack of available data on oil-filled operational equipment at individual facilities, and given the likelihood of compliance cost increases for many facilities, EPA did not quantitatively evaluate this option.

EPA also considered two administrative options to provide relief to oil-filled operational equipment: a compliance date extension and a suspension of all requirements. These options would not have an impact on compliance costs, but would only delay

expenditures at affected facilities. EPA decided against these options because facility owners or operators would remain uncertain about the timing and type of requirements that eventually would apply to them. Since many facilities have operational equipment, delaying changes to these requirements could lead to a significant number of facilities needing to modify their existing Plans more than once to accommodate future rule changes. A suspension would increase the risk of discharge at qualified facilities during the interim period, if they delay compliance with the SPCC rule.

7. Key Limitations of the Analysis

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

options, EPA has chosen to examine various scenarios for each option to bound the range of cost savings that could occur.

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

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

8. Conclusions

Considered separately and applying a 7 percent discount rate, today’s proposed regulatory changes could yield compliance costs savings of \$6.3 million to \$23.1 million for the ‘Qualified Facility’ option; at least \$15.7 million for the ‘Oil-Filled Operational Equipment’ option; and \$0.6 million to \$3 million for motive power exemption. EPA does not believe that these cost reductions would be offset by any significant losses in environmental protection.

B. Paperwork Reduction Act

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

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

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

In the absence of this proposed rulemaking, EPA estimates that 511,797 facilities would be subject to the SPCC rule in 2006 and have SPCC Plans. In addition, EPA estimates that approximately 4,520 new facilities would become subject to SPCC requirements annually.

EPA also estimates that, in the absence of this proposed rulemaking, the average annual public reporting and recordkeeping burden for this collection of information for existing and newly regulated facilities would range between 43,399 to 1,057,389 hours and 8,020 to 92,277 hours, respectively, depending on facility characteristics (e.g., storage capacity and number of tanks).

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

Under the proposed rule, an estimated 368,327 regulated facilities would annually be subject to the SPCC information collection requirements of this rule during the information collection period. The net annualized capital and start-up costs for the SPCC information collection portion of the rule would average \$92 million and net annualized labor and operation and maintenance costs are estimated to be \$26 million for all of these facilities combined.

The information collection burden of the SPCC rule prior to this rulemaking averaged 1,589,252 hours per year. Under this proposed rule, the estimated annual average burden over the next three-year ICR period would be 1,492,029 hours, resulting in a 6.1 percent average reduction. The annual burden would be hours. The estimated average annual public reporting for facilities already regulated by the Oil Pollution Prevention regulation would range

between 43,399 and 1,057,339 hours, while the burden for newly regulated facilities would range between 8,020 and 97,858 hours as a result of this proposal.

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

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

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number **OPA-2005-0001**. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See 'Addresses' section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after **[Insert date of publication**

in the FEDERAL REGISTER], a comment to OMB is best assured of having its full effect if OMB receives it by [Insert date 30 days after publication in the FEDERAL REGISTER]. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

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

After considering the economic impacts of today's proposed rule on small entities, the Agency certifies that this action would not have a significant economic impact on a substantial

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

This proposed rule would reduce regulatory burden on qualified facilities and qualified oil-filled operational equipment. Qualified facilities would no longer need a licensed Professional Engineer to certify their Plans. Facilities that store oil solely in onboard motive power containers would no longer be regulated, while other facilities with oil storage in addition to onboard motive power containers may incur lower compliance costs. Today’s proposal would also allow greater use of contingency plans without requiring an impracticability determination as an alternative to secondary containment for certain oil-filled operational equipment. It would also allow airport refueler trucks to fall under a facility’s general secondary containment requirements rather than require sized secondary containment. We have therefore concluded that today’s proposed rule would relieve regulatory burden for small entities and welcome comments on issues related to such impacts.

Overall, EPA estimates that today’s proposal would reduce annual compliance costs by [INSERT NUMBER]. Small facilities, in particular, would benefit. For example, EPA estimates that the proposed rule would lower compliance costs for [INSERT NUMBER] facilities with less than 10,000 gallons of oil storage capacity.

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

D. Unfunded Mandates Reform Act

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

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

Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's proposed rule would reduce burden and costs on qualified facilities and qualified oil-filled operational equipment by approximately [INSERT NUMBER] per year.

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

E. Executive Order 13132--Federalism

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

This proposed rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of

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

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

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

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

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

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866; and (2) concerns an

environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent

with applicable law or otherwise impractical. Voluntary consensus standards are technical standards such as materials specifications, test methods, sampling procedures, and business practices that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

List of Subjects in 40 CFR Part 112

Airports, Animal fats and vegetable oils, Environmental protection, Farms, Fire prevention, Flammable materials, Materials handling and storage, Oil pollution, Oil spill response, Penalties, Petroleum, Reporting and recordkeeping requirements, Tanks, Water pollution control, Water resources.

Dated: _____

Stephen L. Johnson,
Administrator.

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

PART 112 - OIL POLLUTION PREVENTION

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

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

Subpart A [Amended]

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

§ 112.1 General applicability.

* * * * *

(d) * * *

(2) * * *

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

§112.2.

* * * * *

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

* * * * *

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

§ 112.2 Definitions.

* * * * *

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

* * * * *

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

* * * * *

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

* * * * *

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

* * * * *

4. Amend § 112.3 by revising paragraphs (a) , (b), (d) introductory text, and adding paragraph (g) to read as follows:

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

* * * * *

(a)(1) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, amend it if necessary to ensure compliance with this part, and implement the amended Plan no later than August 18, 2006. If your onshore or offshore facility becomes operational after August 16, 2002, through August 18, 2006, and could

reasonably be expected to have a discharge as described in §112.1(b), you must prepare and implement a Plan on or before August 18, 2006.

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

(b)(1) If you are the owner or operator of an onshore or offshore facility that becomes operational after August 18, 2006, and could reasonably be expected to have a discharge as described in §112.1(b), you must prepare and implement a Plan before you begin operations.

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

* * * * *

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

* * * * *

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

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

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

(ii) The facility either:

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

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

(2) Self-Certification. If you are the owner or operator of a qualified facility and you choose to self-certify your Plan or technical amendments to your Plan, you must certify in the Plan that:

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

(ii) You or your agent have visited and examined the facility;

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

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

(v) The Plan is being fully implemented;

(vi) The facility meets the qualification criteria set forth under §112.3(g)(1);

(vii) The Plan does not utilize the environmental equivalence and impracticability provisions under §§112.7(a)(2) and 112.7(d), except as described in paragraph (g)(3) of this section; and

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

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

(i) Environmental Equivalence. The Plan may not include alternate methods to the applicable requirements listed in §112.7(a)(2) in order to achieve equivalent environmental protection.

(ii) Impracticability. The Plan may not include any impracticability determinations as described under §112.7(d) .

(iii) Security (excluding oil production facilities). The owner or operator must choose to either:

(A) Comply with the requirements under §112.7(g) ; or

(B) Prepare a security plan that describes how the facility controls access to the oil handling, processing and storage areas; secures master flow and drain valves; prevents unauthorized access to starter controls on oil pumps; secures out-of-service and loading/unloading connections of oil pipelines; addresses the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges during hours of darkness.

(iv) Bulk Storage Container Inspections. In lieu of the requirements in §§112.8(c)(6) and 112.12(c)(6), an owner/operator must test/inspect each aboveground container for integrity on a regular schedule and whenever material repairs are made. The owner or operator must determine, in accordance with industry standards, the appropriate inspector/testing personnel qualifications, the frequency and type of testing/inspections which take into account container size, configuration, and design (such as containers that are: equipped with a floating roof, shop built, field erected, skid-mounted, elevated, equipped with a liner, double walled, or partially buried). Examples of these integrity tests include, but are not limited to: visual inspection, hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or other systems of non-destructive testing. You must keep comparison records and you must also inspect the container's supports and foundations. In addition, you must frequently inspect the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Records of inspections and tests kept under usual and customary business practices satisfy the recordkeeping requirements of this paragraph.

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

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

* * * * *

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

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

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

* * * * *

(a) * * *

(2) Comply with all applicable requirements listed in this part. Except as provided in §112.3(g), your Plan may deviate from the requirements in paragraphs (g), (h)(2) and (3), and (i) of this section and the requirements in subparts B and C of this part, except the secondary containment requirements in paragraphs (c) and (h)(1) of this section, and §§112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), and 112.12(c)(11), where applicable to a specific facility, if you provide equivalent environmental protection by some other means of spill prevention, control, or countermeasure. Where your Plan does not conform to the applicable requirements in paragraphs (g), (h)(2) and (3), and (i) of this section, or the requirements of subparts B and C of this part, except the secondary containment requirements in paragraph (c) and (h)(1) of this section, and §§112.8(c)(2), 112.8(c)(11), 112.9(c)(2), 112.10(c), 112.12(c)(2), and 112.12(c)(11), you must state the reasons for nonconformance in your Plan and describe in detail alternate methods and how you will achieve equivalent environmental protection. If the Regional Administrator determines that the measures described in your Plan do not

provide equivalent environmental protection, he may require that you amend your Plan, following the procedures in §112.4(d) and (e).

* * * * *

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

* * * * *

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

* * * * *

(k) The requirements of paragraph (c) of this section do not apply to any oil-filled operational equipment with an individual oil storage capacity of 1,320 gallons or less if:

(1) The facility where the oil-filled operational equipment is located either:

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

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

(2) The owner or operator has established and documented the facility procedures for inspections or a monitoring program to detect equipment failure and/or a discharge; and

(3) The owner or operator has either submitted a response plan under §112.20, or the facility Plan provides an oil spill contingency plan following the provisions of part 109 of this chapter and a written commitment of resources as described in paragraphs (d)(1) and (d)(2) of this section.

Subpart B - [Amended]

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

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

* * * * *

(c) * * *

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

* * * * *

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

* * * * *

Subpart C - [Amended]

8. Amend § 112.12 by revising the section heading to read as follows:

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

* * * * *

§ 112.13 [Removed and Reserved]

9. Remove and reserve § 112.13 to read as follows:

§ 112.14 [Removed and Reserved]

10. Remove and reserve § 112.14 to read as follows:

§ 112.15 [Removed and Reserved]

11. Remove and reserve § 112.15 to read as follows: