ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[FRL–5930–1]

RIN 2050–AC62

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) proposes to revise the Spill Prevention, Control, and Countermeasure (SPCC) Plan requirements, found at 40 CFR part 112, to reduce its information collection burden. Proposed revisions would: give facility owners or operators flexibility to use alternative formats for SPCC Plans; allow the use of certain records maintained pursuant to usual and customary business practices, or pursuant to the National Pollutant Discharge Elimination System (NPDES) program, to be used in lieu of records mandated by the SPCC requirements; reduce the information required to be submitted after certain spill events; and extend the period in which SPCC Plans must be reviewed and evaluated. EPA also proposes to amend the Facility Response Plan (FRP) requirements, found at 40 CFR 112.20, for two purposes. First, EPA proposes to provide a method to calculate storage capacity when certain facilities have tanks which contain mixtures of process water/waste water with 10% or less of oil. This calculation is for the sole purpose of determining whether a facility has sufficient capacity to subject it to the requirement in § 112.20 to prepare an FRP. Second, EPA proposes to amend the FRP requirements to clarify that the Integrated Contingency Plan format may be acceptable for an FRP. EPA believes that none of the proposed changes will have an adverse impact on public health or the environment. This is so because the proposal would maintain the same standards of environmental protection that the rule now affords while reducing its information collection burden.

DATES: Comments must be submitted on or before February 2, 1998.

ADDRESSES: Written comments on the proposed rule should be submitted in triplicate, by U.S. mail, to the Superfund Docket, at 401 M St., S.W., Washington, D.C. 20460 (mail code 5203G). The docket is physically located at 1235 Jefferson Davis Highway, Crystal Gateway 1, Arlington, Virginia 22202, Suite 105. Comments physically delivered to EPA by any means other than U.S. mail should go to the Arlington address. The docket number for the proposed rule is #SPCC–7. Comments may also be sent electronically to EPA at ''superfund.docket@epamail.epa.gov.'' Files should be sent in ascii format. The record supporting this rulemaking is contained in the Superfund Docket and is available for inspection, by appointment only, between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. Appointments to review the docket can be made by calling 703–603–9232. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Hugo Paul Fleischman, Oil Program Center, U.S. Environmental Protection Agency, at 703–603–8769; or the RCRA/Superfund Hotline at 800–424–9346 (in the Washington, D.C. metropolitan area, 703–412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800–553–7672 (in the Washington, D.C. metropolitan area, 703–412–3323).

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

I. Introduction

A. Regulated Entities

Entities Potentially Regulated by this Proposal Include:

Category	NAICS codes
Petroleum and Coal Products Manufacturing	NAICS 324.
Petroleum Bulk Stations and Terminals	NAICS 42271.
Crude Petroleum and Natural Gas Extraction	NAICS 2111111.
Transportation (including Pipelines), Warehousing, and Marinas	NAICS 482–486/488112–48819/4883/48849/492–493/71393.
Electric Power Generation, Transmission, and Distribution	NAICS 2211.
Other Manufacturing	NAICS 31–33.
Gasoline Stations/Automotive Rental and Leasing	NAICS 4471/5321.
Heating Oil Dealers	NAICS 454311.
Coal Mining, Non-Metallic Mineral Mining and Quarrying	NAICS 2121/2123/213114/213116.
Heavy Construction	NAICS 234.
Elementary and Secondary Schools, Colleges	NAICS 6111–6113.
Hospitals/Nursing and Residential Care Facilities	NAICS 622–623.
Crop and Animal Production	NAICS 111–112.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. It lists the types of entities of which EPA is now aware that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility could be regulated by this action, you should carefully examine the criteria in §§ 112.1 and 112.20 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. Statutory Authority

Section 311(j)(1)(C) of the Clean Water Act (CWA or the Act) 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. 33 U.S.C. 1321(j)(1)(C). The President has delegated the authority to regulate non-transportation-related onshore facilities under section 311(j)(1)(C) of the Act to the U.S. Environmental Protection Agency (EPA or the Agency). Executive Order (E.O.) 12777, section 2(b)(1), 56 FR 54757 (October 22, 1991), superseding Executive Order 11735, 38 FR 21243. By this same E.O., the President has delegated similar authority over transportation-related onshore facilities, deepwater ports, and vessels to the U.S. Department of Transportation (DOT),

and authority over other offshore facilities, including associated pipelines, to the U.S. Department of the Interior (DOI). A Memorandum of Understanding (MOU) among EPA, DOI, and DOT effective February 3, 1994, has redelegated the responsibility to regulate certain offshore facilities located in and along the Great Lakes, rivers, coastal wetlands, and the Gulf Coast barrier islands from DOI to EPA. (E.O. 12777 § 2(I) regarding authority to redelegate.) The MOU is included as Appendix B to 40 CFR part 112. An MOU between the Secretary of Transportation and the EPA Administrator, dated November 24, 1971 (36 FR 24080), established the definitions of non-transportation-related facilities and transportation-related facilities. The definitions from the 1971 MOU are included as Appendix A to 40 CFR part 112.

C. Background of this Rulemaking

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

The SPCC requirements have been amended a number of times. On August 29, 1974, the regulation was amended to set out the Agency's policies on civil penalties for violation of section 311 requirements. 39 FR 31602. On March 26, 1976, the rule was again amended, primarily to clarify the criteria for determining whether or not a facility is subject to regulation. 41 FR 12567. Other revisions made in the March 26, 1976, rule clarified that the SPCC Plan must be in written form and specified the procedures for development of SPCC Plans for mobile facilities.

Implementation of the regulation since the 1976 revision indicated the need for other changes, primarily to clarify and simplify the rule. Therefore, on May 20, 1980, the Agency proposed further revisions to the SPCC rule. 45 FR 33814. The 1980 proposal was never finalized because the Agency believed these proposed changes needed additional justification. However, continuing experience with administering the program provided that justification and demonstrated a need for clarifications to 40 CFR 112.7. Accordingly, on October 22, 1991, the Agency proposed certain changes to 40 CFR 112.7 similar to those proposed in 1980. 56 FR 54612.

The October 1991 proposed revisions involved changes in the applicability of the regulation and the required procedures for the completion of SPCC Plans, as well as the addition of a facility notification provision. The proposed rule also reflected changes in the jurisdiction of section 311 of the Act made by amendments to the Act in 1977 and 1978. To date, the proposal has not been finalized.

On November 4, 1992 (57 FR 52705), the Agency promulgated a revision to the civil penalty provisions for violations occurring prior to the enactment of the Oil Pollution Act of 1990 (OPA). On March 11, 1996, EPA rescinded that penalty provision because it no longer accurately reflected the penalties provided for under section 311(b) of the Act, as amended by OPA. 61 FR 9646.

On February 17, 1993, the Agency again proposed further clarifications of and technical changes to the SPCC rule, and facility response plan requirements to implement OPA. 58 FR 8824. The proposed changes to the SPCC prevention requirements included clarifications of certain requirements, contingency plans for facilities without secondary containment, prevention training, and methods of determining whether a tank would be subject to brittle fracture. The facility response plan requirements of the 1993 proposal were promulgated on July 1, 1994, (59 FR 47384) and codified at 40 CFR 112.20–21. To date, the prevention requirements in the 1993 proposal have not been finalized.

In 1996, EPA concluded a survey of SPCC facilities. EPA used the results of that survey to help develop this proposed rule. The survey results are part of the administrative record for this rulemaking.

The purpose of this proposal is to reduce the information collection burden now imposed by the prevention requirements in the SPCC rule and the response requirements in the FRP rule without creating an adverse impact on public health or the environment. It supplements the 1991 and 1993 proposals. The earlier proposals remain pending, except for the withdrawal in this notice of the proposed 1991 definition of ''SPCC Plan.'' A revised definition of that term is being reproposed today. EPA will, after considering public comments, promulgate a rule finalizing this proposal. In that rule, EPA will also finalize the 1991 and 1993 proposals. EPA is not seeking additional comments on either the 1991 or 1993 proposals.

II. Request for Comment and Discussion of Proposed Revisions

A. Request for Comment

EPA proposes to reduce the information collection burden of the SPCC rule through program changes. In connection with these proposed changes, EPA requests public comment on new standards, technologies, or approaches that have been developed since the enactment of OPA which would reduce the burden of other SPCC rule requirements, without compromising environmental protection. EPA requests comments on these possible measures in order to discover additional ways to reduce the information collection burden of the rule. Conversely, EPA also seeks comments on measures not now required that would enhance the environmental protection the SPCC rule provides. Both of these requests for public comments are for the purpose of securing information to develop possible future rules or policies, and are not for the purpose of developing a final rule implementing this proposed rule. Lastly, for purposes of developing a final rule, EPA is considering whether any change is justified in the level of storage capacity which subjects a facility to the requirement to prepare an SPCC Plan. Currently, a facility with a total aboveground storage capacity of 1,320 gallons or less of oil, but that has a single container with a capacity in excess of 660 gallons of oil is subject to SPCC requirements. EPA is considering eliminating the provision in the current rule that requires a facility having a container with a storage capacity in excess of 660 gallons to prepare an SPCC Plan, as long as the total capacity of the facility remained at 1,320 gallons or less. The effect of such a change would be to raise the threshold for regulation to an aggregate aboveground storage capacity greater than 1,320 gallons, thereby eliminating the need for facilities with less than that capacity to prepare an SPCC Plan. EPA invites public comment on this issue and supporting data where available.

B. Proposed Program Revisions

Specific proposed revisions are discussed below.

40 CFR 112.2

On October 22, 1991, EPA proposed a definition for ''SPCC Plan or Plan.'' 56 FR 54612, 54632. Today, EPA is withdrawing that proposal in favor of a revised definition. The proposed rule would describe an SPCC Plan, and would allow an Integrated Contingency Plan or a State plan that meets all the requirements of part 112 to be counted as an SPCC Plan, if it is sequentially cross-referenced from the requirement in § 112.7 to the page(s) of the equivalent requirement in the other plan. The Regional Administrator may accept any other format if it: (1) meets all regulatory requirements in the SPCC rule; and, (2) is sequentially cross-referenced by SPCC rule provision to the page(s) of the equivalent requirement in the other plan. The proposed change would allow facilities new flexibility in formatting an SPCC Plan. A new facility developing an SPCC Plan would have the opportunity to use the most convenient acceptable format. Existing facilities could also elect to use one of the proposed alternative formats. EPA contemplates that at least two types of formats could be used in addition to the format prescribed in § 112.7, and would amend the rule to include those formats as acceptable examples. The formats are discussed below.

Integrated Contingency Plans or ICPs. One format that would be allowed is an Integrated Contingency Plan (ICP) prepared in accordance with the notice published at 61 FR 28642, June 5, 1996. The intent of the ICP is to provide a mechanism for consolidating multiple plans that facilities may have prepared to comply with various regulations into one functional emergency response plan.

The ICP was developed for facilities to integrate emergency response plan requirements. EPA does not contemplate that the use of an ICP or other format would reduce the information collection burden, but it would simplify compliance with multiple applicable statutes and rules.

State Plans and Requirements. Approximately 20 States have oil spill prevention requirements pursuant to State law. Included in those requirements is often the responsibility to prepare an SPCC-like plan. The proposed rule would allow an owner or operator of a facility flexibility to prepare a State SPCC-like plan in lieu of a Federal SPCC Plan if the State plan meets all the regulatory requirements contained in part 112. Like ICPs, State plans would also have to be cross-referenced sequentially from the Federal SPCC requirement in part 112 to the plan page(s) containing the equivalent requirement. In cases where an owner or operator of a facility chooses to prepare a State plan containing only some of the elements required in the Federal plan, the State plan would have to: (1) contain elements that are equal to or more stringent than Federal SPCC requirements; (2) be sequentially cross-referenced by SPCC rule provision to the page(s) of the equivalent Plan provision; and, (3) be supplemented by elements that meet the remainder of the EPA requirements contained in part 112.

40 CFR 112.4(a)

Section 112.4(a) requires that an owner or operator of a facility subject to the SPCC rule provide certain information to EPA after a discharge of 1,000 gallons of oil into or upon the navigable waters of the United States or adjoining shorelines in a single event, or when two reportable spills of any size occur within any twelve month period. Reportable spills are defined at 40 CFR 110.3. 61 FR 7419, February 28, 1996. EPA proposes to reduce the information that an owner or operator must report pursuant to § 112.4(a). The Agency proposes to require that the owner or operator would report: (1) the name of the facility; (2) the name(s) of the owner or operator of the facility; (3) the location of the facility; (4) a description of the facility, including maps, flow diagrams, and topographical charts; (5) the cause of the spill(s), including a failure analysis of system or subsystem in which the failure occurred; (6) corrective actions and/or countermeasures taken, including an adequate description of equipment repairs and/or replacements; (7) additional preventive measures taken or contemplated to minimize the possibility of recurrence; and, (8) such other information as the Regional Administrator may reasonably require pertinent to the Plan or spill event. EPA would eliminate from the rule the need to always submit: (1) the date and year of initial facility operation; (2) maximum storage or handling capacity of the facility and normal daily throughput; and, (3) a complete copy of the SPCC Plan with any amendments. EPA believes that the information that would be eliminated from a post-spill report is not always necessary in order to accurately assess the spill or to require appropriate corrective action. The Regional Administrator would still retain discretion to require information that is specified by the current rule in a post-spill report, or any other information as he/she finds necessary. The reporting requirements under 40 CFR part 110 would still apply to any discharge of oil to navigable waters or adjoining shorelines that is ''harmful'' as specified in § 110.3.

40 CFR 112.5(b)

An owner or operator of a facility subject to the SPCC regulations must review and evaluate a facility's SPCC plan at least once every three years from the date the facility becomes subject to 40 CFR part 112. EPA is proposing to extend the period in which an owner or operator must conduct this review and evaluation from at least once every three years to at least once every five years. EPA is proposing this change because it believes that it would have the effect of reducing the record keeping burden, thus saving time and money for facilities, while causing no harm to the environment. A facility owner or operator would still have to amend an SPCC Plan whenever there is a change in facility design, construction, operation, or maintenance which materially affects the facility's potential for discharge of oil into or upon the navigable waters of the United States or adjoining shorelines. 40 CFR 112.5(a). Therefore, absent such changes, an SPCC plan should continue to provide adequate protection against discharges for a five year period.

In its 1991 proposal to amend the SPCC rule, EPA solicited comments on whether owners or operators of facilities should have to affix a signed and dated statement to the SPCC Plan indicating that the triennial review has taken place and whether or not amendment of the Plan is required. EPA did not at that time propose a rule change. 56 FR 54612, 54616, 54629, October 22, 1991. Today, EPA is implementing that request for comments with a proposed rule change that would provide that an owner or operator must certify completion of the review and evaluation. An owner or operator, for purposes of this certification, includes any person with authority to fully implement the Plan, e.g., a facility manager. The certification would entail little additional information collection burden as it would merely note completion of the review and evaluation process at least once every five years. See 5 CFR 1320.7(j)(1). It would be maintained with the Plan at the facility, and would provide EPA with written proof that the owner or operator has complied with the rule.

40 CFR 112.7 Introduction

EPA is proposing to amend the introduction to § 112.7 so that its language conforms to the newly proposed definition of an SPCC Plan in § 112.2. See the above discussion. The change to the introduction would merely track language in proposed § 112.2 to allow facilities flexibility to use certain alternative formats in lieu of the format prescribed in the SPCC rule, such as the ICP format, certain State formats, or other formats acceptable to the Regional Administrator.

40 CFR 112.7(e)(2)(iii)(D)

EPA is proposing to amend § 112.7(e)(2)(iii)(D), which applies to bulk storage tanks (onshore), excluding production facilities. Section 112.7(e)(2)(iii) authorizes the drainage of rainwater from the diked area into a storm drain or an effluent discharge that empties into an open water course, lake, or pond, and bypasses the in-plant treatment system if four conditions are met. 40 CFR 112.7(e)(2)(iii)(A)–(D). The change would allow the use of records recording stormwater bypass events which are required to be kept under a National Pollutant Discharge Elimination System (NPDES) permit. In the NPDES regulations, ''bypass'' is defined to mean the ''intentional diversion of waste streams from any portion of a treatment facility.'' 40 CFR 122.41(m)(1)(I).

The NPDES regulations set forth conditions that all NPDES permits must contain. 40 CFR 122.21. One of these NPDES ''standard conditions'' allows for excusable bypasses under certain conditions. 40 CFR 122.41(m)(2), (3), and (4). One of the conditions is that the permittee must provide notice of the bypass event. 40 CFR 122.41(m)(3). Under 40 CFR 122.41(j)(2), the permittee must maintain records of all such bypass events for at least three years from the date of the report. These permit conditions for notification and record keeping serve the same objective as the SPCC rule requirement in § 112.7(e)(2)(iii)(D), and the documentation is therefore acceptable to satisfy the SPCC requirement. Furthermore, the proposed change would reduce the information collection burden imposed by the SPCC rule. Owners or operators would no longer be required to maintain duplicate records of the same event pursuant to different regulatory programs.

This proposed change would also affect the information collection burden imposed by § 112.7(e)(5)(ii)(A). This section requires inspection of diked areas in onshore oil production facilities prior to drainage as provided in § 112.7(e)(2)(iii)(B), (C), and (D). By the cross reference to the record keeping requirements in § 112.7(e)(2)(iii)(D), the requirement to maintain adequate records of such events is included. Therefore, when those records of bypass event notification are maintained at onshore oil production facilities pursuant to NPDES permitting conditions as discussed above, duplicative record keeping under part 112 would be unnecessary.

40 CFR 112.7(e)(2)(vi)

Section 112.7(e)(2)(vi) requires periodic integrity testing of aboveground tanks, taking into account tank design (floating roof, etc.), and using such techniques as hydrostatic testing, visual inspection, or a system of non-destructive shell thickness testing. It further requires maintenance of comparison records when appropriate. Tank supports and foundations should be included in these inspections. In addition, the rule requires that the outside of the tank should be frequently observed by operating personnel for signs of deterioration, leaks which might cause a spill, or accumulation of oil inside diked areas.

EPA proposes to amend § 112.7(e)(2)(vi) to provide that usual and customary business records would suffice to meet the record keeping requirements of the section. Among such usual and customary business records are those maintained pursuant to API Standards 653 and 2610.

API Standard 653 concerns tank inspection, repair, alteration, and reconstruction. It is considered the predominant standard for aboveground tank inspection and its provisions are based on tank design principles found in API Standards 620 and 650. API Standard 653 calls for owners or operators of tanks and associated systems to maintain a complete record file consisting of construction, repair/alteration history, and inspection history records. Construction records include nameplate information, drawings, specifications, construction complete reports, and any results of material tests and analyses. Repair/alteration history includes all data accumulated on a tank from the time of its construction with regard to repairs, alterations, replacements, and service changes. Inspection history includes all measurements taken, the condition of all parts inspected, and a record of all examinations and tests.

API Standard 2610 concerns design, construction, operation, maintenance, and inspection of terminal and tank facilities. It incorporates the requirements of many different standards for tanks into one document. The Standard recommends that records should be kept of the activities conducted pursuant to the Standard. It recommends that periodic inspection and preventive maintenance should be conducted on all transfer systems to control leaks. Accurate inventory records may be maintained and periodically reconciled for indication of possible leakage from tanks and piping systems. It further calls on the operator to keep complete maintenance records for all equipment within a terminal.

40 CFR 112.7(e)(8)

EPA proposes to amend § 112.7(e)(8) to provide that usual and customary business records, such as records maintained pursuant to API Standards 653 and 2610, would suffice to meet the requirements of the section. The revision would have the effect of reducing the information collection burden of the SPCC rule. See the discussion concerning usual and customary business practices above.

The section requires that inspections required by part 112 be in accordance with written procedures developed for the facility by the owner or operator. These written procedures and a record of inspections, signed by the appropriate supervisor or inspector, must be made a part of the SPCC Plan and maintained for a period of three years.

40 CFR 112.20(f)(4)

The owner or operator of any non-transportation-related onshore facility that, because of its location could be expected to cause substantial harm to the environment by discharging oil in harmful quantities into or on the navigable waters of the United States or adjoining shorelines, is required to prepare and submit a facility response plan to EPA. To determine whether a facility could cause substantial harm, an owner or operator of a facility must review the criteria listed in Appendix C of the rule and base his/her determination on those criteria. A facility that transfers oil over water to or from vessels and that has a total oil capacity greater than or equal to 42,000 gallons would meet the substantial harm criteria and be required to prepare and submit a response plan as required by § 112.20 to the appropriate Regional Administrator. Any other facility with a capacity of one million gallons or more would evaluate the criteria in 40 CFR 112.20(f)(1)(ii)(A)–(D) and work through the flowchart in Appendix C to determine whether it is a substantial harm facility.

EPA proposes to add a new paragraph to § 112.20(f) to provide a method to calculate the oil storage capacity of aboveground tanks containing a mixture of process water/waste water with 10% or less of oil. EPA is proposing this change because it believes that the harm due to spills from tanks that contain 90% or more of process water/waste water is roughly proportional to their oil content. Discharges from tanks containing process water/waste water and 10% or less oil will cause less harm to the environment than tanks containing a greater proportion of oil. Facilities that are required to prepare and submit facility response plans must do so because of the substantial harm that discharges of oil from those facilities might cause. That substantial harm is predicated, at least in part, on a storage capacity determination. If there is a smaller percentage of oil in a tank, there will be less likelihood of great harm. Therefore, EPA believes that the entire capacity of process water/waste water tanks with 10% or less of oil should not be counted in the capacity necessary to subject a facility to the requirement to prepare a facility response plan. Only the oil portion of the storage capacity in process water/waste water of 10% or less oil would be counted. EPA believes that an oil threshold capacity to determine substantial harm calculations of 10% or less in tanks containing process water/waste water is a reasonable one. It is reasonable because it exempts lower risk facilities, from which discharges would not reach substantial harm levels, from having to prepare facility response plans.

The proposed rule change, however, would have no effect on the calculations necessary to determine whether to prepare an SPCC Plan. Calculation of capacity under the SPCC rule of tanks containing mixtures of process water/waste water and oil would continue to be done as it is now. No change is necessary in SPCC capacity calculations because SPCC Plans are designed for prevention purposes, not response. While harm might result from discharges from these SPCC facilities, it would not reach the substantial harm level. Finally, this proposed change would not apply to the oil capacity determination for substantial harm saline process water/waste water from oil drilling, production, or workover facilities because discharges from such facilities have a greater likelihood of causing environmental damage than facilities that do not handle saline water.

Pursuant to the proposed rule, a facility owner or operator would determine the percentage of oil in the process or waste water in a tank. If the percentage of oil varies over a period of time, the owner or operator would use the highest percentage of oil for purposes of the capacity calculation. If the capacity of oil is 10% or less, the owner or operator would multiply the percentage of oil by the capacity of the tank or container. If appropriate, the owner or operator would then add the volume of oil calculated to the total capacity of any other oil storage tank or container with 100% oil or mixtures of oil and process or waste water above the 10% amount to determine its total capacity for the substantial harm determination of § 112.20(f).

40 CFR 112.20(h)

EPA proposes to amend § 112.20(h) to clarify that an Integrated Contingency Plan (ICP) prepared in accordance with the notice published at 61 FR 28642, June 5, 1996 is an acceptable format for a facility response plan. The ICP was developed for facilities to integrate emergency response plan requirements. The intent of the ICP is to provide a mechanism for consolidating multiple plans that facilities may have prepared to comply with various regulations into one functional emergency response plan. Like the proposed requirements for SPCC Plans, the FRP rule already provides for cross-referencing. Similarly, an owner or operator who uses the ICP format must meet all of the regulatory requirements of the FRP rule for that format to be an acceptable substitute for the present FRP format.

EPA does not contemplate that the use of an ICP or other format would reduce the information collection burden of the FRP rule, but it would simplify compliance with multiple applicable statutes and rules.

Appendix C

EPA also proposes to amend Appendix C to this part to reflect changes proposed in § 112.20(f)(4). EPA also proposes to amend section 2.1 of Appendix C to state the correct capacity that subjects a facility to FRP requirements if it transfers oil over water to or from a vessel. That capacity in section 2.1 of Appendix C should read ''greater than or equal to 42,000 gallons * * *'' as specified in § 112.20(f)(1)(I).

III. Summary of Supporting Analyses

A. Executive Order 12866

Under E.O. 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the E.O. The E.O. 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 E.O. 12866.

Pursuant to the terms of E.O. 12866, it has been determined that this proposed rule is a ''significant regulatory action'' because it raises novel legal or policy issues. Such issues include proposed measures which would relieve some facilities of regulatory mandates and could change the manner in which facilities comply with remaining mandates. Therefore, this action was submitted to OMB for review. Changes made in responses to the OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a significant adverse impact on a substantial number of small entities. EPA has determined that this proposed rule would not have a significant adverse impact on a substantial number of small entities because it would impose few if any new burdens, and overall would substantially reduce existing burdens on small businesses. Therefore, I certify that this proposed rule is not expected to have a significant adverse impact on a substantial number of small entities. Thus, no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to OMB as required by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Information Collection Request (ICR) documents

have been prepared by EPA (EPA ICR no. EPA 0328.06 and 1630.04) and copies may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, D.C. 20460 or by calling 202–260–2740. These ICRs are also available for viewing or downloading at EPA's ICR Internet site at http://www.epa.gov/icr.

EPA does not collect the information required by the Oil Pollution Prevention regulation (i.e., the SPCC Plan) on a routine basis. SPCC Plans ordinarily need not be submitted to EPA, but must 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.

Although the facility is the primary data user, EPA also uses the data in certain situations. EPA primarily uses SPCC Plan data to ensure that facilities comply with the regulation. This includes design and operation specifications, and inspection requirements. EPA reviews SPCC Plans: (1) When facilities submit the Plans because of certain oil discharges, and (2) as part of EPA's inspection program. Note however, that the proposed rule would eliminate the necessity to submit the entire Plan after certain discharges, and merely retain the requirement that it be maintained at the facility. State and local governments also use the data, which are not necessarily available elsewhere and can greatly assist local emergency preparedness planning efforts. Preparation of the information for affected facilities is required pursuant to section 311(j)(1) of the Act as implemented by 40 CFR part 112.

Through this rulemaking, EPA proposes to reduce the reporting and record keeping burden for facilities regulated under the SPCC regulation by: (1) expanding the format of an acceptable SPCC plan to include plans prepared to meet State or other Federal standards (i.e., State plans, Integrated Contingency Plans, etc.); (2) extending the period of time that a facility must review its Plan from at least once every three years to at least once every five years; and (3) reducing the reporting requirements in the event of certain reportable oil spills and the record keeping requirements relating to certain discharges of rainwater from a diked area. In addition to the program changes outlined above, EPA is also proposing to decrease the information collection burden calculated for the SPCC rule so that the information collection burden incurred by persons in the normal course of their business activities would no longer be attributed to the part 112 burden.

To quantify the effect of these proposed changes on reducing burden to the regulated community, EPA relied, in part, on data gathered through the 1995 SPCC survey. EPA developed a series of analyses using the survey data including the paper EPA produced in 1996 entitled ''Effectiveness of EPA's SPCC Program on Spill Risk.'' The results of the analysis show that compliance with several specific SPCC provisions appears to reduce both the number and the amount of oil that migrates outside of a facility's boundaries. Facility practices such as tank leak detection, spill overfill protection, pipe external protection, and secondary containment, also appear to reduce the number and magnitude of oil spills. The results also indicate that a facility's compliance with even one SPCC measure may serve as a general indicator of a facility owner's/operator's awareness of the importance of other spill prevention and control measures.

The net annual public reporting and record keeping burden for this collection of information, as proposed, for newly regulated facilities is estimated to range from 37.1 to 53.5 hours, with an average burden of 39.2 hours, including time for reviewing instructions and gathering the data needed. The net annual public reporting and record keeping burden for facilities already regulated by the Oil Pollution Prevention regulation is estimated to range from 3.7 to 9.5 hours, with an average burden of 4.0 hours. These average annual burden estimates take into account the varied frequencies of response for individual facilities according to characteristics specific to those facilities, including frequency of oil discharges and facility modification. Under the proposed rule, an estimated 446,498 existing and newly regulated facilities are subject to the information collection requirements of this proposed rule during the first year of the information collection period. The net annualized capital and start-up costs average $0.3 million, and net annualized labor and operation and maintenance costs are $49.8 million.

The present information collection burden of the SPCC rule averages 2,557,194 hours per year for the information collection period. Through this rulemaking EPA proposes to reduce that burden by approximately 864,471 hours. This proposed reduction would result in an average annual burden of 1,692,723 hours.

In addition to the modifications the Agency is proposing to make to the SPCC rule, the Agency is also proposing to modify the information collection requirements of the Facility Response Plan (FRP) regulation as part of this rulemaking effort. The FRP rule (40 CFR 112.20–112.21) requires that owners and operators of facilities that could cause ''substantial harm'' to the environment by discharging oil into navigable waters or adjoining shorelines prepare plans for responding, to the maximum extent practicable, to a worst case discharge of oil, to substantial threat of such a discharge, and, as appropriate, to discharges smaller than worst case discharges. Each FRP is submitted to the Agency, which in turn, reviews and approves plans from facilities identified as having the potential to cause ''significant and substantial harm'' to the environment from oil discharges. Other low-risk, regulated facilities are not required to prepare FRPs but are required to document their determination that they do not meet the ''substantial harm'' criteria.

Through this rulemaking, EPA proposes to reduce the reporting and record keeping burden for facilities regulated under the FRP rule by adding a paragraph to § 112.20(f) to provide a method to calculate the oil storage capacity of aboveground tanks containing a mixture of process water/waste water with 10 percent or less of oil. EPA also proposes to amend § 112.20(h) to clarify that an Integrated Contingency Plan prepared in accordance with the notice published at 61 FR 28642, June 5, 1996, is an acceptable format for an FRP; and to amend section 2.1 of Appendix C to state the correct capacity that subjects a facility to FRP requirements if it transfers oil over water or to or from a vessel.

The Agency anticipates that only the first proposed change will have an appreciable impact on the burden to the regulated community. The Agency expects that the number of facilities subject to the requirements to develop an FRP and maintain the plan on a year-to-year basis will slightly decrease as a result of the proposed process water/waste water calculation. In the current ICR, EPA estimated that 5,400 facilities would be required to develop and submit FRPs and 4,482 of these facilities were large facilities (i.e., facilities with storage capacity greater than one million gallons). Of these 4,482 facilities, EPA estimated that approximately 250 facilities in the industrial manufacturing category would be excluded from the FRP requirements as a result of the proposal. Although these facilities have

already incurred costs to develop an FRP, the facilities would no longer incur costs associated with maintaining the Plan or retaining outside response contractors in the event of an oil spill. The Agency has previously estimated that it requires approximately 118 hours for facility personnel in a large, consumption facility to comply with the annual, subsequent-year reporting and record keeping requirements of the FRP rule after adjusting for compliance with other Federal and State regulations. The present information collection burden of the FRP rule averages 376,599 hours a year. Through this rulemaking EPA proposes to reduce that burden by approximately 24,190 hours. This proposed reduction would result in an annual average burden of 352,409 hours.

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 are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates and the supporting analyses used to develop burden estimates, and any suggested methods for further minimizing respondent burden, including the use of automated collection techniques. Send comments on the Information Collection Request to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., S.W.; Washington, D.C. 20460 or E-mail farmer.sandy@epamail.epa.gov; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, D.C. 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 2, 1997, a comment to OMB is best assured of having its full effect if OMB receives it by January 2, 1998. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Differentiation Between Classes of Oils

Pursuant to Public Law 104–55, 33 U.S.C. 2720, enacted November 20, 1995, most Federal agencies (including EPA) must, in the issuance or enforcement of any regulation or the establishment of any interpretation or guideline relating to the transportation, storage, discharge, release, emission, or disposal of a fat, oil, or grease, consider differentiating between and establishing separate classes for animal fats and oils and greases, fish and marine mammal oils, and oils of vegetable origin (as opposed to petroleum and other oils and greases). EPA has considered whether differentiation between and establishment of separate classes of oils is appropriate for this proposed rule and concluded that it is not. This conclusion is based on the fact that the EPA proposal would reduce the information collection burden for all classes of facilities. Achievement of that goal does not require differentiation among classes of oils.

E. Unfunded Mandates

Pursuant to section 202 of the Unfunded Mandates Reform Act (the Act) of 1995, enacted March 22,1995, Federal agencies must prepare a statement to accompany any rule in which the estimated costs of State, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any one year. Section 205 of the Act requires agencies to select the most cost-effective and least-burdensome alternative that achieves the objective of the rule and that is consistent with statutory requirements. Section 203 of the Act requires an agency to establish a plan for informing and advising any small government that may be significantly impacted by the rule. Small governments would not be significantly impacted by this proposed rule, therefore, it is not necessary to establish a plan pursuant to section 203. In fact, the proposed rule would reduce the information collection burden on small governments that have facilities which are subject to the SPCC rule.

EPA has determined that this proposed rule does not include a Federal mandate that would result in estimated costs of $100 million or more either to State, local, or tribal governments in the aggregate, or to the private sector in any one year. This determination is based on the fact that the proposed rule would impose no new mandates, and would reduce costs to the private sector, while imposing no new costs on State, local, or tribal governments. Thus today's proposal is not subject to the requirements of sections 202 and 205 of the Act.

F. National Technology Transfer and Advancement Act

Under § 12(d) of the National Technology Transfer and Advancement Act, the Agency is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) which are developed or adopted by voluntary consensus standard bodies. In those cases where the Act applies and where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

Without necessarily deciding whether the Act applies here, EPA invites comment on the potential use of voluntary consensus standards in this rulemaking. In particular, as noted above, EPA proposes to amend 40 CFR 112.7(e)(2)(vi) and (e)(8) to provide that the records maintained pursuant to usual and customary business practices would suffice to meet the recordkeeping requirements of the sections. While not specifically referenced in the proposed regulation, usual and customary business records would include those maintained pursuant to American Petroleum Institute (API) Standards 653 and 2610. The Agency proposes this flexible approach to be consistent with the goal of reducing the recordkeeping requirements of this regulation. EPA invites public comment on the Agency's proposal as well as identification and information about other standards, and in particular, voluntary consensus standards, which the Agency should consider.

List of Subjects in 40 CFR Part 112

Environmental protection, Fire prevention, Flammable materials, Materials handling and storage, Oil pollution, Oil spill prevention, Oil spill response, Petroleum, Reporting and

record keeping requirements, Tanks, Water pollution control, Water resources.

Dated: November 24, 1997.

Carol Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 112 is proposed to be amended as follows:

PART 112—OIL POLLUTION PREVENTION

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

Authority: 33 U.S.C 1321 and 1361; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

2. Section 112.2 is amended by adding the definition ''Spill Prevention, Control, and Countermeasure Plan; SPCC Plan; or Plan'' in alphabetical order to read as follows:

§ 112.2 Definitions.

* * * * *

Spill Prevention, Control, and Countermeasure Plan; SPCC Plan; or *Plan* means the document required by § 112.3 that details the equipment, manpower, procedures, and steps to prevent, control, and provide adequate countermeasures to an oil spill. The Plan is a written description of the facility's compliance with the procedures in this part. It is prepared in writing and in accordance with the format specified in § 112.7, or in the format of a plan prepared pursuant to State law, or in another format acceptable to the Regional Administrator. If an owner or operator of a facility chooses to prepare a plan using either the Integrated Contingency Plan format or a State format or any other format acceptable to the Regional Administrator, such plan must meet all of the requirements in § 112.7, and be sequentially cross-referenced from the requirement in § 112.7 to the page(s) of the equivalent requirement in the other plan.

* * * * *

3. Section 112.4 is amended by revising paragraphs (a)(1) through (a)(8) to read as follows:

§ 112.4 Amendment of SPCC Plans by Regional Administrator.

(a) * * *

(1) Name of the facility;

(2) Name(s) of the owner or operator of the facility;

(3) Location of the facility;

(4) Corrective action and/or countermeasures taken, including an adequate description of equipment repairs and/or replacements;

(5) Description of the facility, including maps, flow diagrams, and topographical maps;

(6) The cause(s) of such spill(s), including a failure analysis of system or subsystem in which the failure occurred;

(7) Additional preventive measures taken or contemplated to minimize the possibility of recurrence; and

(8) Such other information as the Regional Administrator may reasonably require pertinent to the Plan or spill event.

* * * * *

4. Section 112.5 is amended by revising the first sentence of paragraph (b) to read as follows:

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

* * * * *

(b) Notwithstanding compliance with paragraph (a) of this section, owners and operators of facilities subject to § 112.3(a), (b), or (c) shall certify completion of a review and evaluation of the SPCC Plan at least once every five years from the date such facility becomes subject to this part. * * *

* * * * *

5. Section 112.7 is amended by revising the last sentence of the introductory text; and by revising paragraph (e)(2)(iii)(D), and the last sentence of paragraphs (e)(2)(vi), and (e)(8) to read as follows:

§ 112.7 Guidelines for the preparation and implementation of a Spill Prevention Control and Countermeasure Plan.

* * * The complete SPCC Plan shall follow the sequence outlined below, unless it is in another format acceptable to the Regional Administrator, such as one described in § 112.2, and include a discussion of the facility's conformance with the appropriate guidelines listed:

* * * * *

(e) * * *

(2) * * *

(iii) * * *

(D) Adequate records are kept of such events, such as records required pursuant to permits issued in accordance with §§ 122.41(j)(2) and 122.41(m)(3) of this chapter.

* * * * *

(vi) * * * Records of inspections maintained pursuant to usual and customary business practices will suffice for purposes of this paragraph.

* * * * *

(8) * * * Records of inspections maintained pursuant to usual and customary business practices will suffice for purposes of this paragraph.

* * * * *

6. Section 112.20 is amended by adding paragraph (f)(4) and by revising the first sentence of paragraph (h) to read as follows:

§ 112.20 Facility response plans.

* * * * *

(f) * * *

(4) To determine the capacity of a facility storing process water/waste water with oil concentrations of 10% or less, for purposes of paragraphs (f)(1)(i) and (ii) of this section (except for saline process water/waste water from an oil drilling, production, or workover facility), the following calculations shall be used:

(i) Determine the percentage of oil in the process water/waste water of a tank or container. If the percentage of oil varies over a period of time, the highest percentage shall be used;

(ii) If the percentage of oil is 10% or less, multiply the percentage of oil by the capacity of the tank or container;

(iii) If appropriate, add the amount calculated in paragraphs (f)(4)(i) and (4)(ii) of this section to the total capacity of any other oil tank or storage container containing 100% oil or mixtures of oil and process water/waste water above 10%;

(iv)(A) A facility that transfers oil over water to or from vessels and has a storage capacity of oil greater than or equal to 42,000 gallons will be considered a facility that could cause substantial harm to the environment by discharging oil to the navigable waters or adjoining shorelines.

(B) A facility with a capacity of 1 million gallons or greater shall continue through the criteria in appendix C of this part to determine whether the facility could cause substantial harm to the environment by discharging oil to the navigable waters or adjoining shorelines.; and

(v) A facility that has completed the calculations required by this paragraph and does not meet the substantial harm threshold will not have to prepare and submit a response plan unless directed to do so by the Regional Administrator.

* * * * *

(h) A response plan shall follow the format of the model facility-specific response plan included in Appendix F to this part, unless an equivalent response plan has been prepared to meet State or other Federal requirements. * * *

* * * * *

7. Appendix C to part 112 is amended by revising section 2.0 and the first sentence of section 2.1 to read as follows:

Appendix C to Part 112—Substantial Harm Criteria

* * * * *

2.0 Description of Screening Criteria for the Substantial Harm Flowchart

A facility that has the potential to cause substantial harm to the environment in the event of a discharge must prepare and submit a facility-specific response plan to EPA in accordance with appendix F to this part. To determine the capacity of a facility storing process water/waste water with oil concentrations of 10% or less (except for saline process water/waste water from an oil drilling, production, or workover facility), the respondent shall use the method prescribed in § 112.20(f)(4). A description of the screening criteria for the substantial harm flowchart is provided below:

2.1 Non-Transportation-Related Facilities With a Total Oil Storage Capacity Greater Than or Equal to 42,000 Gallons Where Operations Include Over-Water Transfers of Oil.

A non-transportation-related facility with a total oil storage capacity greater than or equal to 42,000 gallons that transfers oil over water to or from vessels must submit a response plan to EPA. * * *

* * * * *

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