



National Aeronautics and
Space Administration

Principal Center for Regulatory Risk Analysis and Communication

REGULATORY SUMMARY

Final Rule

Amendments to Spill Prevention, Control, and Countermeasures (SPCC) Rule

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Introduction

On 13 November 2009, the U.S. Environmental Protection Agency (EPA) issued a final rule ([74 FR 58784](#)) promulgating revisions to the December 2008 amendments to the Spill Prevention, Control, and Countermeasures (SPCC) rule. This action promulgates revisions to the 5 December 2008 amendments to the rule following EPA's review of comments. Previously, in December 2008, EPA issued a final rule ([73 FR 74235](#)) that amended the SPCC rule to provide increased clarity, to tailor requirements to particular industry sectors, and to streamline certain requirements for operations that are subject to the regulations. EPA subsequently delayed the effective date of those amendments and also requested public comment on the delay and on the December 2008 amendments. In the 13 November 2009 final rule, EPA either retained or provided minor technical corrections for the majority of the December 2008 provisions and removed certain provisions. This rule will be effective 14 January 2010.

Background

The SPCC regulations apply to owners or operators of non-transportation-related facilities that:

- Drill, produce, store, process, refine, transfer, distribute, use, or consume oil or oil products
- Could reasonably be expected to discharge oil to U.S. navigable waters or adjoining shorelines

Additionally, facilities are subject to the rule if they have an aboveground oil storage capacity greater than 1,320 gallons or underground oil storage capacity greater than 42,000 gallons that is not subject to the underground storage tank (UST) regulations. The SPCC regulations include exemptions for the following equipment:

- Completely buried storage tanks subject to all of the technical requirements of the UST regulations ([40 CFR 280](#) or as adopted by the state)
- Containers with a storage capacity of less than 55 gallons of oil
- Parts of wastewater treatment facilities used exclusively for wastewater treatment, such as oil/water separators. Tanks used to hold oil recovered from oil/water separators in a wastewater treatment facility are subject to the SPCC regulations.
- Permanently closed containers
- Motive power containers

- Hot-mix asphalt and hot-mix asphalt containers
- Pesticide application equipment and related mix containers
- Residential heating oil containers at single family residences
- Oil USTs at nuclear power generation facilities
- Intra-facility gathering lines subject to the U.S. Department of Transportation's pipeline regulations

Summary of Amendments

The changes in the final rule issued on 13 November 2009 are outlined in the following sections. EPA retained the majority of the provisions from the December 2008 amendments. EPA also provided minor technical corrections and removed certain provisions from the December 2008 amendments. Other sections of the amendments that are not addressed in this summary include regulations for farms, residential heating oil, oil production facilities, manmade structures, underground emergency diesel generator tanks at nuclear power stations, and wind turbines.

Final Amendments Effective Without Change

Hot-mix Asphalt

Hot-mix asphalt (HMA) is a blend of asphalt cement (AC) and aggregate material, such as stone, sand, or gravel, that is formed into final paving products for use on roads and parking lots. The revised rule exempts HMA and HMA containers from regulation under the SPCC rules on the basis that the material is unlikely to flow as a result of the entrained aggregate, thus making it unlikely that the material would have the potential to reach navigable waters or adjoining shorelines. Because all types of asphalt are petroleum oil products, EPA will continue to regulate AC, asphalt emulsions, and cutbacks, which are not HMA. Storage containers solely containing HMA are not to be counted toward the facility's oil storage capacity.

Definition of Facility

The final rule amends the definition of "facility" in [40 CFR 112.2](#) to clarify the existing flexibility associated with describing a facility's boundaries. The definition was amended to meet the following objectives:

- To clarify that only the definition of "facility" rather than the definition of "production facility" determines applicability for the purposes of Part 112
- To allow an owner or operator of a facility to separate or aggregate containers to determine facility boundaries based on such factors as ownership or operation of the buildings, structures, containers, and equipment on the site, and on the activities being conducted, property boundaries, and other relevant considerations
- To clarify the definition as pertaining to "oil waste treatment"

Facility Diagram

[40 CFR 112.7\(a\)\(3\)](#) requires that a facility diagram identify the location and contents of oil containers, connecting piping, and transfer stations. These amendments provide additional flexibility for this requirement and also require that all fixed containers and piping, including intra-facility gathering lines that are exempted from SPCC regulation, now be identified on the facility diagram and marked "exempt." Including these exempted containers on the diagram

facilitates the identification of hazards during a spill response. For mobile or portable containers, such as drums, the area of the facility where these containers are stored must be marked. The numbers and capacities of such containers may be marked on the facility diagram or described in the SPCC Plan. If the number of such containers changes, an estimate of the numbers, the anticipated contents, and the capacities can be included in the Plan.

Loading and Unloading Rack

To clarify which equipment is subject to the provisions for facility tank car and tank truck loading and unloading racks, the definition of “loading/unloading rack” is amended to read as follows:

“Loading/unloading rack means a fixed structure (such as a platform, gangway) necessary for loading or unloading a tank truck or tank car, which is located at a facility subject to the requirements of this part. A loading/unloading rack includes a loading or unloading arm and may include any combination of the following: pipe assemblages, valves, pumps, shut-off devices, overfill sensors, or personnel safety devices.”

This definition governs whether a facility is subject to [40 CFR 112.7\(h\)](#). On the basis of this amended definition, the requirements of Section 112.7(h) only apply to areas of a regulated facility where a loading and unloading rack that meets this definition is located. Additionally, all references in the text of the requirement have been modified to refer to “loading/unloading racks” versus “loading/unloading areas.” Oil production facilities and farms have been exempted from the requirements of [40 CFR 112.7\(h\)](#) because the loading and unloading areas associated with oil production tank batteries and farms usually do not have the equipment described in the amended definition of a loading and unloading rack. Loading and unloading racks that meet the amended definition are required to comply with [40 CFR 112.7\(h\)](#).

General Secondary Containment

EPA amended the general secondary containment requirements to provide clarity. With regard to determining the method, design, and capacity for secondary containment, the owner or operator need only address the typical failure mode and the most likely quantity of oil that would be discharged. Secondary containment measures to prevent a discharge to navigable waters or adjoining shorelines either may be active (those requiring deployment or other specific action by the operator) or passive (permanent installations that do not require deployment or action by the owner or operator). EPA also amended the general secondary containment provisions to include additional examples of prevention systems for onshore facilities, including drip pans, sumps, and collection systems. Expanding the list of examples allows for increased clarity and better representation of current prevention practices.

In December 2006, EPA exempted mobile refuelers from the sized secondary containment requirements applicable to bulk storage containers ([71 FR 77266](#)). EPA now extends this exemption to non-transportation-related tank trucks at facilities subject to the SPCC rule. These non-transportation-related tank trucks include those used for short-term storage and transport of fuel, crude oil, condensate, non-petroleum, or other oils for transfer to or from bulk storage containers.

Security

EPA also has amended the facility security requirements in [40 CFR 112.7\(g\)](#) to allow an owner or operator of a facility to tailor security measures to the facility's specific characteristics and location. This option previously was extended to qualified facilities in the December 2006 amendments, but is now provided to all facilities subject to the security requirements. EPA has modified the requirements to allow the owner or operator to describe in the SPCC Plan how the facility will do the following:

- Secure and control access to all oil handling, processing, and storage areas
- Secure master flow and drain valves
- Prevent unauthorized access to starter controls on oil pumps
- Secure out-of-service and loading and unloading connections of oil pipelines
- Address the appropriateness of security lighting both to prevent acts of vandalism and to assist in the discovery of oil discharges

A facility owner or operator is required to document in the SPCC Plan how these security measures are implemented. These requirements replace the more prescriptive fencing and other requirements found in [40 CFR 112.7\(g\)\(1\) through \(5\)](#) and allow the facility owner or operator to determine how best to secure and control access to areas where a discharge to navigable waters or adjoining shorelines may originate. EPA believes that this amendment will eliminate the need for Professional Engineer (PE)-certified environmentally equivalent alternatives to the specified security requirements. Because the revised requirements apply to all facilities (excluding oil production facilities), EPA is removing the security requirements in [40 CFR 112.6\(c\)\(3\)](#) for qualified facilities to eliminate redundancy.

Integrity Testing

EPA amended the requirements of [40 CFR 112.8\(c\)\(6\)](#) and [40 CFR 112.12\(c\)\(6\)](#) to allow for greater flexibility in complying with the bulk storage container integrity testing requirements. Specifically, the owner or operator of a facility is allowed to consult and rely on industry standards to determine the appropriate qualifications for tank inspectors and testing personnel and the type and frequency of integrity testing required for a particular container size and configuration. Essentially, this amendment extends the provisions for qualified facilities in the December 2006 amendments to all facilities subject to the integrity testing provision. To eliminate redundancy, the integrity testing requirements of [40 CFR 112.6\(c\)\(4\)](#) have been removed. Under the updated provisions, the owner or operator of a facility must:

- Test and inspect each aboveground container for integrity on a regular schedule and whenever material repairs are made.
- Determine, in accordance with industry standards, the appropriate qualifications of personnel performing tests and inspections and the frequency and type of testing and inspections, which take into account container size, configuration, and design.

The amendments allow an owner or operator to adopt integrity testing requirements that are outlined in industry standards rather than requiring PE-certified environmental equivalence determinations. Owners or operators must still maintain comparison records, inspect the container's supports and foundations, and conduct frequent inspections of the outside of the container. Deviation from industry standards or rule provisions is still allowed; however, these alternate measures must be PE-certified equivalent environmental protections.

Integrity Testing Requirements for Animal Fats and Vegetable Oil

EPA is differentiating the integrity testing requirements in [40 CFR 112.12\(c\)\(6\)](#) for an owner or operator of a facility that handles certain types of animal fats and vegetable oil (AFVOs). The amendment provides the PE or owner or operator that is self-certifying the SPCC Plan the flexibility to use a visual inspection program for integrity testing that is appropriate for the containers that store AFVOs and meet certain criteria in accordance with the requirements of the Food and Drug Administration (FDA) for bulk storage containers.

Technical Corrections to Provisions of the December 2008 Amendments

EPA corrected the text of the following provisions promulgated on 5 December 2008. These corrections further clarify or update the provisions of the December 2008 amendments without making substantive changes to the regulatory requirements. EPA also provided technical corrections to provisions for underground emergency diesel generator tanks at nuclear power stations, SPCC plan preparation and implementation for new oil production facilities, and compliance date provisions specific to farms.

Tier I Qualified Facilities

In December 2006, EPA finalized amendments to the SPCC rule that allowed the owner or operator of a qualified facility to self-certify his SPCC Plan ([71 FR 77266](#)). The final rule issued on 5 December 2008 ([73 FR 74236](#)) allowed the owners and operators of a subset of qualified facilities that meet additional criteria to complete a streamlined, self-certified SPCC Plan template. This template will make up the new Appendix G to [40 CFR 112](#). EPA amended the definitions published in December 2006 so that “qualified facilities” are now referred to as “Tier II qualified facilities” and the subset to which the use of the Plan template applies are referred to as “Tier I qualified facilities.” Tier I qualified facilities are those facilities that have no individual oil storage container with a capacity greater than 5,000 U.S. gallons, up to a combined container capacity of 10,000 gallons. The requirements for Tier II qualified facilities remain unchanged.

The amendments require that:

- The owner or operator of a Tier I qualified facility must examine areas where there is a reasonable possibility for equipment failure (such as where equipment is loaded or unloaded; where tank overflow, rupture, or leakage is possible; or at the location of any other equipment known to be a source of discharge) and to include in the SPCC Plan the total quantity of oil that could be discharged with the predicted direction of flow. The amendments remove the requirement for an owner or operator of a Tier I qualified facility to predict the rate of flow that could result from an equipment failure.
- EPA has combined mobile and portable container requirements with the other bulk storage container secondary containment requirements, and eliminated the requirement for containment to be “sufficiently impervious.” EPA believes that most Tier I qualified facilities are small facilities with simple operations and oil storage containers located inside buildings or within pre-engineered secondary containment, thus making the requirement for containment to be “sufficiently impervious” redundant.
- The owner or operator of a Tier I qualified facility must ensure that each container is provided with a system or documented procedure to prevent overfills of containers. These containers must be tested regularly to ensure proper operation or efficacy.

- EPA has provided further clarifications to the December 2008 amendments and has corrected errors in various sections of the Appendix G SPCC Plan Template. EPA's amendments will not pre-empt any state or local requirements. Therefore, in states where the engineer licensing boards have prohibited SPCC Plan self certification, the owner or operator must have a PE-certified Plan.

Provisions Removed from Final Rule

EPA removed the following provisions that were included in the December 2008 amendments from the final rule ([74 FR 58784](#)) after reviewing all comments received and considering relevant facts:

- Exclusions for oil production facilities and farms from loading/unloading rack requirements
- Alternative qualified facility eligibility criteria for an oil production facility
- Exemption for certain produced water containers at an oil production facility

Compliance Dates

Listed below are the compliance dates for onshore and offshore facilities (excluding oil production facilities):

Compliance Dates for Facilities (other than Oil Production Facilities)

Date of Start of Operation	Requirements
On or before 08/16/2002	Maintain the existing SPCC Plan Amend and implement the SPCC Plan no later than 11/10/2010
After 08/16/2002 through 11/10/2010	Amend and implement the SPCC Plan no later than 11/10/2010
After 11/10/2010	Prepare and implement an SPCC Plan before beginning operations

Applicability to NASA

As a result of the final amendments to the SPCC rule, NASA facilities may be required to amend existing SPCC Plans in accordance with these new regulations. Facilities should continue to maintain their current SPCC Plans until individual plans are amended. The final rule does not remove any regulatory requirement for owners or operators of facilities in operation before 16 August 2002 to develop, implement, and maintain its SPCC plan in accordance with the SPCC regulations.