

§ 112.1

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OF THE INTERIOR, SECRETARY OF TRANSPORTATION, AND ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY
APPENDIX C TO PART 112—SUBSTANTIAL HARM CRITERIA

APPENDIX D TO PART 112—DETERMINATION OF A WORST CASE DISCHARGE PLANNING VOLUME

APPENDIX E TO PART 112—DETERMINATION AND EVALUATION OF REQUIRED RESPONSE RESOURCES FOR FACILITY RESPONSE PLANS

APPENDIX F TO PART 112—FACILITY-SPECIFIC RESPONSE PLAN

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

SOURCE: 38 FR 34165, Dec. 11, 1973, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 112 appear at 65 FR 40798, June 30, 2000.

§ 112.1 General applicability.

(a) This part establishes procedures, methods and equipment and other requirements for equipment to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or upon the navigable waters of the United States or adjoining shorelines.

(b) Except as provided in paragraph (d) of this section, this part applies to owners or operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil and oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines.

(c) As provided in section 313 (86 Stat. 875) departments, agencies, and instrumentalities of the Federal government are subject to these regulations to the same extent as any person, except for the provisions of § 112.6.

(d) This part does not apply to:

(1) Facilities, equipment or operations which are not subject to the jurisdiction of the Environmental Protection Agency, as follows:

(i) Onshore and offshore facilities, which, due to their location, could not reasonably be expected to discharge oil into or upon the navigable waters of

the United States or adjoining shorelines. This determination shall be based solely upon a consideration of the geographical, locational aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, etc.) and shall exclude consideration of manmade features such as dikes, equipment or other structures which may serve to restrain, hinder, contain, or otherwise prevent a discharge of oil from reaching navigable waters of the United States or adjoining shorelines; and

(ii) Equipment or operations of vessels or transportation-related onshore and offshore facilities which are subject to authority and control of the Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency, dated November 24, 1971, 36 FR 24000.

(2) Those facilities which, although otherwise subject to the jurisdiction of the Environmental Protection Agency, meet both of the following requirements:

(i) The underground buried storage capacity of the facility is 42,000 gallons or less of oil, and

(ii) The storage capacity, which is not buried, of the facility is 1,320 gallons or less of oil, provided no single container has a capacity in excess of 660 gallons.

(e) This part provides for the preparation and implementation of Spill Prevention Control and Countermeasure Plans prepared in accordance with § 112.7, designed to complement existing laws, regulations, rules, standards, policies and procedures pertaining to safety standards, fire prevention and pollution prevention rules, so as to form a comprehensive balanced Federal/State spill prevention program to minimize the potential for oil discharges. Compliance with this part does not in any way relieve the owner or operator of an onshore or an offshore facility from compliance with other Federal, State or local laws.

[38 FR 34165, Dec. 11, 1973, as amended at 41 FR 12657, Mar. 26, 1976]

§ 112.2 Definitions.

For the purposes of this part:

Environmental Protection Agency

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Adverse weather means the weather conditions that make it difficult for response equipment and personnel to cleanup or remove spilled oil, and that will be considered when identifying response systems and equipment in a response plan for the applicable operating environment. Factors to consider include significant wave height as specified in Appendix E to this part, as appropriate, ice conditions, temperatures, weather-related visibility, and currents within the area in which the systems or equipment are intended to function.

Animal fat means a non-petroleum oil, fat, or grease of animal, fish, or marine mammal origin.

Complex means a facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the Clean Water Act.

Contract or other approved means: (1) A written contractual agreement with an oil spill removal organization(s) that identifies and ensures the availability of the necessary personnel and equipment within appropriate response times; and/or

(2) A written certification by the owner or operator that the necessary personnel and equipment resources, owned or operated by the facility owner or operator, are available to respond to a discharge within appropriate response times; and/or

(3) Active membership in a local or regional oil spill removal organization(s) that has identified and ensures adequate access through such membership to necessary personnel and equipment to respond to a discharge within appropriate response times in the specified geographic areas; and/or

(4) Other specific arrangements approved by the Regional Administrator upon request of the owner or operator.

Discharge includes but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping. For purposes of this part, the term *discharge* shall not include any discharge of oil which is authorized by a permit issued pursuant to section 13 of the River and Harbor Act of 1899 (30 Stat. 1121, 33 U.S.C. 407), or sections 402 or 405 of the FWPCA Amendments of

1972 (86 Stat. 816 *et seq.*, 33 U.S.C. 1251 *et seq.*).

Fish and wildlife and sensitive environments means areas that may be identified by either their legal designation or by evaluations of Area Committees (for planning) or members of the Federal On-Scene Coordinator's spill response structure (during responses). These areas may include wetlands, National and State parks, critical habitats for endangered/threatened species, wilderness and natural resource areas, marine sanctuaries and estuarine reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, recreational areas, national forests, Federal and State lands that are research national areas, heritage program areas, land trust areas, and historical and archeological sites and parks. These areas may also include unique habitats such as: aquaculture sites and agricultural surface water intakes, bird nesting areas, critical biological resource areas, designated migratory routes, and designated seasonal habitats.

Injury means a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource resulting either directly or indirectly from exposure to a discharge of oil, or exposure to a product of reactions resulting from a discharge of oil.

Maximum extent practicable means the limitations used to determine oil spill planning resources and response times for on-water recovery, shoreline protection, and cleanup for worst case discharges from onshore non-transportation-related facilities in adverse weather. It considers the planned capability to respond to a worst case discharge in adverse weather, as contained in a response plan that meets the requirements in § 112.20 or in a specific plan approved by the Regional Administrator.

The term *navigable waters* of the United States means *navigable waters* as defined in section 502(7) of the FWPCA, and includes:

(1) All navigable waters of the United States, as defined in judicial decisions prior to passage of the 1972 Amendments to the FWPCA (Pub. L. 92-500), and tributaries of such waters;

(2) Interstate waters;

(3) Intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and

(4) Intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce.

Navigable waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

Non-petroleum oil means oil of any kind that is not petroleum-based, including but not limited to: Fats, oils, and greases of animal, fish, or marine mammal origin; and vegetable oils, including oils from seeds, nuts, fruits, and kernels.

Offshore facility means any facility of any kind located in, on, or under any of the navigable waters of the United States, which is not a transportation-related facility.

Oil means oil of any kind or in any form, including, but not limited to petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil.

Oil Spill Removal Organization means an entity that provides oil spill response resources, and includes any for-profit or not-for-profit contractor, cooperative, or in-house response resources that have been established in a geographic area to provide required response resources.

Onshore facility means any facility of any kind located in, on, or under any land within the United States, other than submerged lands, which is not a transportation-related facility.

Owner or operator means any person owning or operating an onshore facility or an offshore facility, and in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment.

Person includes an individual, firm, corporation, association, and a partnership.

Petroleum oil means petroleum in any form, including but not limited to

crude oil, fuel oil, mineral oil, sludge, oil refuse, and refined products.

Regional Administrator, means the Regional Administrator of the Environmental Protection Agency, or his designee, in and for the Region in which the facility is located.

Spill event means a discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in harmful quantities, as defined at 40 CFR part 110.

Transportation-related and *non-transportation-related* as applied to an onshore or offshore facility, are defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency, dated November 24, 1971, 36 FR 24080.

United States means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

Vegetable oil means a non-petroleum oil or fat of vegetable origin, including but not limited to oils and fats derived from plant seeds, nuts, fruits, and kernels.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used as a means of transportation on water, other than a public vessel.

Worst case discharge for an onshore non-transportation-related facility means the largest foreseeable discharge in adverse weather conditions as determined using the worksheets in Appendix D to this part.

[38 FR 34165, Dec. 11, 1973, as amended at 58 FR 45039, Aug. 25, 1993; 59 FR 34097, July 1, 1994; 65 FR 40798, June 30, 2000]

EFFECTIVE DATE NOTE: At 65 FR 40798, June 30, 2000, §112.2 was amended by adding definitions for "Animal fat", "Non-petroleum oil", "Petroleum oil", and "Vegetable oil" in alphabetical order, effective July 31, 2000.

§ 112.3 Requirements for preparation and implementation of Spill Prevention Control and Countermeasure Plans.

(a) Owners or operators of onshore and offshore facilities in operation on or before the effective date of this part that have discharged or, due to their