

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[EPA-HQ-OPA-2005-0003; FRL-8007-1]

RIN 2050-AG28

Oil Pollution Prevention; Non-Transportation Related Onshore Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to extend the dates by which facilities must prepare or amend Spill Prevention, Control, and Countermeasure Plans (SPCC Plans), and implement those Plans. This action would allow the Agency time to promulgate revisions to the July 17, 2002 final SPCC rule before owners and operators are required to meet requirements of that rule related to preparing or amending, and implementing SPCC Plans. The proposed revisions to the 2002 final SPCC rule are published elsewhere in today's **Federal Register**.

DATES: Comments must be received on or before January 11, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OPA-2005-0003, by one of the following methods:

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

- *Mail:* The mailing address of the docket for this rulemaking is EPA Docket Center (EPA/DC), Docket ID No. EPA-HQ-OPA-2005-0003, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

- *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. EPA-HQ-OPA-2005-0003. 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.regulations.gov>, 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 <http://www.regulations.gov>. The <http://www.regulations.gov> Web site is an

"anonymous access" system, 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 <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> 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 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:

I. 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.

II. Background

On July 17, 2002, the Agency published a final rule that amended the

SPCC regulations (see 67 FR 47042). The rule became effective on August 16, 2002. The final rule included compliance dates in § 112.3 for preparing, amending, and implementing SPCC Plans. The original compliance dates were amended on January 9, 2003 (see 68 FR 1348), again on April 17, 2003 (see 68 FR 18890) and a third time on August 11, 2004 (see 69 FR 48794).

Under the current provisions in § 112.3(a) and (b), a facility that was in operation on or before August 16, 2002 must make any necessary amendments to its SPCC Plan by February 17, 2006, and fully implement its SPCC Plan by August 18, 2006; a facility that came into operation after August 16, 2002 but before August 18, 2006, must prepare and fully implement an SPCC Plan on or before August 18, 2006. Thus, for facilities in operation on or before August 16, 2002, the regulations provide a six-month period between the compliance date for Plan amendment and the compliance date for Plan implementation. In addition, § 112.3(c) requires onshore and offshore mobile facilities to prepare or amend and implement SPCC Plans on or before August 18, 2006.

III. Proposal To Extend the Compliance Dates

This proposed rule would extend the dates in § 112.3(a) and (b) by which a facility must prepare or amend and implement its SPCC Plan. As a result of this proposed rule, a facility that was in operation on or before August 16, 2002 would have to make any necessary amendments to its SPCC Plan, and implement that Plan, on or before October 31, 2007. In addition, a facility that came into operation after August 16, 2002 would have to prepare and implement an SPCC Plan on or before October 31, 2007.

This proposed rule would similarly extend the compliance dates in § 112.3(c) for mobile facilities. Under this proposal, a mobile facility must prepare or amend and implement an SPCC Plan on or before October 31, 2007.

The Agency believes the extension of the compliance dates proposed in this notice are warranted for several reasons. The Agency is proposing revisions to the 2002 SPCC rule elsewhere in today's **Federal Register**. Those revisions would provide significant regulatory relief to some facilities and to some types of oil-filled equipment. The Agency believes that the regulatory relief proposed in that **Federal Register** notice is important to ensure that the SPCC regulation remains protective of human health and the environment but, at the same time,

is not overly burdensome to the regulated community. Since the Agency will not have time to promulgate the proposed regulatory relief before the current compliance dates for SPCC Plan preparation, amendment, and implementation, the Agency believes it is appropriate to extend those dates. This approach would allow facilities opportunity to make changes to their facilities and to their SPCC Plans necessary to comply with revised, less burdensome requirements, rather than with the existing requirements.

Further, the Agency believes that this proposed extension of the compliance dates would provide facilities time necessary to fully understand the regulatory relief offered by revisions to the 2002 SPCC rule. This would allow facilities to take full advantage of any regulatory revisions the Agency might promulgate. Regarding modifications of the SPCC regulations, to the extent practicable, EPA will establish deadlines for compliance implementation that commence one year after promulgating the regulatory revisions.

In addition, the Agency has issued the "SPCC Guidance for Regional Inspectors," which is intended to assist regional inspectors in reviewing a facility's implementation of the SPCC rule. The document is designed to facilitate an understanding of the rule's applicability, to help clarify the role of the inspector in the review and evaluation of the performance-based SPCC requirements, and to provide a consistent national policy on several SPCC-related issues. The guidance also is available to both the owners and operators of facilities that may be subject to the requirements of the SPCC rule and to the general public on the Agency's Web site at <http://www.epa.gov/oilspill>. The Agency believes that this proposed extension would provide the regulated community opportunity to understand the material presented in that guidance before preparing or amending their SPCC Plans.

Finally, the Agency is concerned that the effects of the recent hurricanes on many industry sectors might adversely impact their ability to meet the upcoming compliance dates if no extension is provided.

It is important to note that we considered whether to maintain the six month interim period between the compliance dates for Plan amendment and implementation or to combine the two dates in order to allow an additional six months for Plan amendment. Since facilities are not required to submit SPCC Plans to the

Agency at the time of Plan amendment, the Agency is proposing to combine the compliance dates for Plan amendment and implementation so that they both coincide on October 31, 2007 in order to allow facilities an additional six months to amend SPCC Plans in accordance with the requirements under §§ 112.3(a) through (c).

The Agency is seeking comment on this proposal to have one date by which SPCC Plans must be amended and implemented in accordance with the 2002 amendments to the SPCC Rule, and on the extension of these dates to October 31, 2007 for all facilities. 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.

IV. 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 not a "significant regulatory action" because it would extend the compliance dates in § 112.3, but would have no other substantive effect. However, because of its interconnection with the related SPCC rule proposed elsewhere in this **Federal Register** notice (see discussion above in section III), which is a significant action under the terms of Executive Order 12866, this action was

nonetheless submitted to OMB for review.

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 relieve the regulatory burden for small entities by extending the compliance dates in § 112.3.

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. This proposed rule would

reduce burden and costs for all facilities.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. As was explained above, the effect of the proposed rule would be to reduce burden and costs for all facilities, including 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 regulation 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, the Agency has not consulted with a representative organization of tribal groups.

G. Executive Order 13045—Protection of Children From Environmental Health and Safety Risk

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

Environmental protection, Oil pollution, Penalties, Reporting and recordkeeping requirements.

Dated: December 2, 2005.

Stephen L. Johnson,
Administrator.

For the reasons set forth in the preamble, title 40 CFR, chapter I, part 112 of the Code of Federal Regulations 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. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

2. Section 112.3 is amended by revising paragraphs (a), (b), and (c) to read as follows:

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

* * * * *

(a) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, by October 31, 2007, and implement the Plan no later than October 31, 2007. If your onshore or offshore facility becomes operational after August 16, 2002, through October 31, 2007, 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 October 31, 2007.

(b) If you are the owner or operator of an onshore or offshore facility that becomes operational after October 31, 2007, 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.

(c) If you are the owner or operator of an onshore or offshore mobile facility, such as an onshore drilling or workover rig, barge mounted offshore drilling or

workover rig, or portable fueling facility, you must prepare, implement, and maintain a facility Plan as required by this section. You must maintain your Plan, but must amend and implement it, if necessary to ensure compliance with this part, on or before October 31, 2007. If your onshore or offshore mobile facility becomes operational after October 31, 2007, 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. This provision does not require that you prepare a new Plan each time you move the facility to a new site. The Plan may be a general Plan. When you move the mobile or portable facility, you must locate and install it using the discharge prevention practices outlined in the Plan for the facility. The Plan is applicable only while the facility is in a fixed (non-transportation) operating mode.

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