

**DATES:** Comments must be received on or before **September 2, 2010**.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2010-0590, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *E-mail:* [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov).

3. *Mail or deliver:* Wienke Tax, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:**

Wienke Tax at telephone number: (415) 947-4192, e-mail address: [tax.wienke@epa.gov](mailto:tax.wienke@epa.gov), or the above EPA, Region IX address.

**SUPPLEMENTARY INFORMATION:** For further information, please see the direct final action, of the same title, which is located in the Rules section of this **Federal Register**. EPA is approving the attainment determination as a direct final rule without prior proposal because EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule.

If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: July 21, 2010.

**Keith Takata,**

*Acting Regional Administrator, EPA Region IX.*

[FR Doc. 2010-19062 Filed 8-2-10; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 112**

[EPA-HQ-OPA-2009-0880; FRL-9184-2]

RIN 2050-AG59

**Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Rule—Proposed Amendments**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule; compliance date amendment.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA or the Agency) is proposing to amend the date by which certain facilities must prepare or amend their Spill Prevention, Control, and Countermeasure (SPCC) Plans, and implement those Plans. This action would allow additional time for those affected in the regulated community to understand the revisions to the SPCC rule finalized in December 2008 and November 2009. In light of the recent uncertainty surrounding EPA's review of the final amendments to the December 2008 rule and the delay of that rule's effective date, the Agency is proposing to provide an additional year for certain facilities, with a new compliance date of November 10, 2011. Additionally, the Agency is proposing to further delay the compliance date for facilities with milk containers, associated piping and appurtenances that are constructed according to the current applicable 3-A Sanitary Standards, and subject to the current applicable Grade "A" Pasteurized Milk Ordinance (PMO) or a State dairy regulatory requirement equivalent to the current applicable PMO. The delay would allow the Agency to take final action on a January 15, 2009 action that proposed to exempt these containers from the SPCC requirements. The compliance date would be delayed one year from the effective date of a final rule specifically addressing SPCC requirements for these milk containers, associated piping and appurtenances, or as specified by a rule that otherwise establishes a new compliance date for these facilities. Both the extension and the delay would provide sufficient time for facilities to undertake the actions necessary to prepare or amend their SPCC Plans, as well as implement them. However, EPA is not proposing to extend the compliance date for drilling, production and workover facilities that are offshore or that have an offshore component, or for onshore facilities

required to submit Facility Response Plans (FRPs).

**DATES:** Comments on this proposed rule must be received by August 18, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OPA-2009-0880, by one of the following methods:

(1) <http://www.regulations.gov>.

Follow the on-line instructions for submitting comments.

(2) *E-mail:* [Docket.RCRA@epa.gov](mailto:Docket.RCRA@epa.gov), Attention Docket ID No. EPA-HQ-OPA-2009-0880.

(3) *Fax:* 202-566-9744, Attention Docket ID No. EPA-HQ-OPA-2009-0880.

(4) *Mail:* EPA Docket Center (EPA/DC), Docket ID No. EPA-HQ-OPA-2009-0880, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(5) *Hand Delivery:* EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington DC 20460. Attention Docket ID No. EPA-HQ-OPA-2009-0880. 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:* 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 [regulations.gov](http://www.regulations.gov) or e-mail.

The Federal [regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means that 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 along 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. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the docket index at

<http://www.regulations.gov>. Although listed in the index, some information is not publicly available (*i.e.*, CBI or other information whose disclosure is restricted by a statute). Certain material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 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 on the SPCC rule, 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 Principe at (202) 564-7913 ([principe.vanessa@epa.gov](mailto:principe.vanessa@epa.gov)) or Mark W. Howard at (202) 564-1964 ([howard.markw@epa.gov](mailto:howard.markw@epa.gov)), U.S. Environmental Protection Agency, 1200

Pennsylvania Avenue, NW., Washington, DC 20460-0002, Mail Code 5104A.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

In the table below, EPA is providing a list of potentially affected entities. However, this proposed action may affect other entities not listed below. The Agency's goal is to provide a guide for readers to consider regarding entities that potentially could be affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section titled **FOR FURTHER INFORMATION CONTACT**.

Industry sector	NAICS code
Oil Production .....	211111
Farms .....	111, 112
Electric Utility Plants .....	2211
Petroleum Refining and Related Industries .....	324
Chemical Manufacturing .....	325
Food Manufacturing .....	311, 312
Manufacturing Facilities Using and Storing Animal Fats and Vegetable Oils .....	311, 325
Metal Manufacturing .....	331, 332
Other Manufacturing .....	31-33
Real Estate Rental and Leasing .....	531-533
Retail Trade .....	441-446, 448, 451-454
Contract Construction .....	23
Wholesale Trade .....	42
Other Commercial .....	492, 541, 551, 561-562
Transportation .....	481-488
Arts Entertainment & Recreation .....	711-713
Other Services (Except Public Administration) .....	811-813
Petroleum Bulk Stations and Terminals .....	4247
Education .....	61
Hospitals & Other Health Care .....	621, 622
Accommodation and Food Services .....	721, 722
Fuel Oil Dealers .....	45431
Gasoline stations .....	4471
Information Finance and Insurance .....	51, 52
Mining .....	212
Warehousing and Storage .....	493
Religious Organizations .....	813110
Military Installations .....	928110
Pipelines .....	4861, 48691
Government .....	92

**B. Tips for Preparing Your Comments**

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.

- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified.

**II. 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.

**III. Background**

On July 17, 2002, the Agency published a final rule that amended the Spill Prevention, Control and Countermeasure (SPCC) regulation (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 dates for complying with amendments to the SPCC

regulations have been amended a number of times: On January 9, 2003 (68 FR 1348), on April 17, 2003 (68 FR 18890), on August 11, 2004 (69 FR 48794), on February 17, 2006 (71 FR 8462), on May 16, 2007 (72 FR 27444), and again on June 19, 2009 (74 FR 29136). These extensions alleviated the need for individual extension requests and provided additional time for the regulated community to, among other things: Understand the July 2002 SPCC amendments and the implications of the litigation (see 69 FR 29728, May 25, 2004 and 73 FR 71941, November 26, 2008); allow those potentially affected in the regulated community an opportunity to make changes to their facilities and to their SPCC Plans necessary to comply with amendments to the SPCC rule as finalized in December 2006, December 2008, and November 2009; and to understand the material presented in the *SPCC Guidance for Regional Inspectors* before preparing or amending their SPCC Plans. All of these changes and amendments were promulgated to provide increased clarity, to tailor requirements to particular industry sectors, and to streamline certain requirements for those facility owners or operators subject to the rule. The current date under § 112.3(a), (b) and (c) by which owners/operators of facilities must prepare or amend their SPCC Plans, and implement those Plans, is November 10, 2010.

In accordance with the January 20, 2009 White House memorandum entitled, "Regulatory Review," and the memorandum from the Office of Management and Budget entitled, "Implementation of Memorandum Concerning Regulatory Review" (M-09-08, January 21, 2009) (OMB memorandum), the effective date of the December 2008 rulemaking was delayed until April 4, 2009 (74 FR 5900, February 3, 2009) and then until January 14, 2010 (74 FR 14736, April 1, 2009). The Agency took this action to ensure that the rule reflected proper consideration of all relevant facts. In the February 3, 2009 notice, EPA requested public comment on the extension of the effective date and its duration, and on the regulatory amendments contained in the December 2008 final rule. Upon reviewing the record for the amendments and the additional comments, EPA promulgated further amendments to the SPCC rule on November 13, 2009 (74 FR 58784), making limited changes to the December 2008 amendments. The effective date for both the December 5, 2008 and the November 13, 2009 final rule is January

14, 2010, with a compliance date of November 10, 2010. Because of the uncertainty that surrounded EPA's review of the final amendments to the December 5, 2008 rule, publication of final rule amendments on November 13, 2009 and the delay of the effective date, the Agency is now proposing to further extend the compliance date for certain facilities.

On January 15, 2009, EPA proposed to exempt from the SPCC requirements milk containers, associated piping and appurtenances provided they are constructed according to current applicable 3-A Sanitary Standards, and are subject to the current applicable PMO or a State dairy regulatory requirement equivalent to the current applicable PMO (74 FR 2461). The Agency also proposed that the capacity of these milk containers would not be included in a facility's total oil storage capacity calculation. This action proposes to further delay the compliance date for facilities that would be impacted by the proposed rule to exempt milk containers, associated piping and appurtenances.

#### IV. Proposal To Amend Compliance Date

Under the current provisions in § 112.3(a), the owner or operator of a facility that was in operation on or before August 16, 2002 must maintain the facility's SPCC Plan, make any necessary amendments to the Plan, and fully implement it by November 10, 2010; the owner or operator of a facility that came into operation after August 16, 2002, but before November 10, 2010, must prepare and fully implement an SPCC Plan on or before November 10, 2010. Under § 112.3(b), the owner or operator of a facility (excluding oil production facilities) that becomes operational after November 10, 2010 must prepare and implement a Plan before beginning operations; the owner or operator of an oil production facility that becomes operational after November 10, 2010 must prepare and implement a Plan within six months after beginning operations. In addition, § 112.3(c) requires the owners and operators of onshore and offshore mobile or portable facilities to prepare, implement, and maintain an SPCC Plan, and to amend it, if necessary, to ensure compliance with this part, on or before November 10, 2010. The owner or operator of any onshore or offshore mobile or portable facility that becomes operational after November 10, 2010, must prepare and implement a Plan before beginning operations.

This proposed rule would amend the dates in § 112.3(a), (b) and (c) by which

the owners/operators of facilities (except drilling, production or workover facilities that are offshore or that have an offshore component, and all onshore facilities required to have and submit FRPs<sup>1</sup>) must prepare or amend their SPCC Plans, and implement those Plans, to November 10, 2011, which is one year from the current SPCC compliance date of November 10, 2010. This proposed extension of the compliance date does not apply to drilling, production or workover facilities that are completely offshore or that have both onshore and offshore components (e.g., an oil production facility with offshore wellheads connected to an onshore tank battery by submerged flowlines). For offshore drilling, production or workover facilities, the Agency is concerned about the need to have the most up-to-date SPCC Plans due to the unusual combination of characteristics of these facilities: Continuous flow of oil at the facility, potential discharges being limited only by the capacity and pressure of the underground reservoir, and discharges that would have immediate and direct impact on water.

For onshore facilities, the Agency is concerned that further extending the existing compliance date for facilities with large oil storage capacities could further increase the potential to cause substantial harm if a discharge were to occur. Onshore facilities with large oil storage capacities have the potential to cause substantial harm as identified under the FRP regulation (40 CFR 112.20 and 112.21). FRP facilities are those with storage capacities of 1 million gallons or more that could cause substantial harm<sup>2</sup> or those with storage capacities at or above 42,000 gallons and that transfer oil to or from a vessel over water. The Agency believes that FRP facilities should also have the most up-to-date SPCC Plans. It should be noted the Agency has not changed any

<sup>1</sup> Offshore FRP facilities are addressed in the exception to the compliance date extension as part of the drilling, production or workover facilities that are offshore or that have an offshore component.

<sup>2</sup> A facility may pose "substantial harm" according to the FRP rule if it (1) has a total oil storage capacity greater than or equal to 42,000 gallons and it transfers oil over water to/from vessels; or (2) has a total oil storage capacity greater than or equal to one million gallons and meets one of the following conditions: (a) Does not have sufficient secondary containment for the capacity of the largest aboveground oil storage tank in each aboveground storage area; (b) is located at a distance such that a discharge from the facility could cause "injury" to fish, wildlife, and sensitive environments; (c) is located at a distance such that a discharge from the facility would shut down a public drinking water intake; or (d) has had, within the past five years, a reportable discharge greater than or equal to 10,000 gallons.

compliance dates with respect to the FRP regulations. Therefore, EPA is not proposing to extend the compliance date for drilling, production or workover facilities that are offshore or that have an offshore component, or all onshore facilities required to submit FRPs, due to the threats these facilities pose of significant oil spills to waters of the U.S. or adjoining shorelines.

The Agency is also proposing to delay the compliance date for facilities with milk containers, associated piping and appurtenances. The delay would be effective for facilities with milk containers that are constructed according to the current applicable 3-A Sanitary Standards, and subject to the current applicable Grade "A" Pasteurized Milk Ordinance (PMO) or a State dairy regulatory requirement equivalent to the current applicable PMO. The delay would be for one year from the effective date of a final rule addressing the SPCC requirements specifically for these milk containers, associated piping and appurtenances, or as specified by a rule that otherwise establishes a compliance date for these facilities. The Agency would establish the new compliance date and publish it in the **Federal Register** as part of any final action on the proposed exemption (74 FR 2461). The delay for these facilities is intended to provide the owner or operator of these facilities the opportunity to fully understand any regulatory amendments that may be finalized.

The Agency is making changes to the regulatory text in § 112.3 to reflect how the compliance date extension would apply for different facilities, as provided for in the proposed rule.

#### *Proposal To Extend Compliance Date by One Year*

This proposed rule would extend for most facilities the dates in § 112.3(a), (b) and (c) by which the owner or operator must prepare or amend and implement an SPCC Plan. Exclusions to this compliance date extension are described below. Today's proposed rule amends and combines the current § 112.3(a) with the current § 112.3(b)(1) and (c) to:

- Amend the compliance date for a facility, including a mobile or portable facility, in operation on or before August 16, 2002 that requires the owner or operator to make any necessary amendments to an SPCC Plan and fully implement the amended Plan by November 10, 2011.<sup>3</sup>

<sup>3</sup> To be eligible for the compliance extension, owners or operators of facilities in operation before August 16, 2002 must continue to maintain their existing SPCC Plans.

- Amend the compliance date for a facility, including a mobile or portable facility, which came into operation after August 16, 2002, but before November 10, 2011, that requires the owner or operator to prepare and fully implement an SPCC Plan on or before November 10, 2011.

- Amend the compliance date for a facility, including a mobile or portable facility, (except an oil production facility<sup>4</sup>) which becomes operational after November 10, 2011 that requires the owner or operator to prepare and implement an SPCC Plan before beginning operations.

- Incorporate the language under the current § 112.3(c) for mobile or portable facilities (such as an onshore drilling or workover rig, or a portable fueling facility) to amend the compliance date for these facilities to November 10, 2011 and maintain the language that allows mobile or portable facilities to prepare a general Plan.

An extension of the compliance date for these facilities is appropriate because it provides the owners or operators of SPCC-regulated facilities the opportunity to fully understand the regulatory amendments offered by revisions to the SPCC rule promulgated on December 5, 2008 (73 FR 74236) and November 13, 2009 (74 FR 58784).<sup>5</sup> Given the delay in the effective date for the December 2008 rule amendment, and the uncertainty that surrounded the final amendments because of this delay, this proposed extension would allow potentially affected facilities an additional year beyond the current compliance date of November 10, 2010 to make any changes to their facilities and SPCC Plans to comply with the revised SPCC requirements. Considering that the changes in the final November 2009 amendments were very limited, and that most of the December 2008 amendments offered compliance options and regulatory burden relief, a limited timeframe for this extension is appropriate. A one-year period from the current compliance date provides sufficient time to understand and

<sup>4</sup> On December 5, 2008 (73 FR 74236) EPA finalized an amendment to allow a new oil production facility (*i.e.*, one that becomes operational after the compliance date) a period of six months after the start of operations to prepare and implement an SPCC Plan.

<sup>5</sup> A facility owner or operator in operation before August 16, 2002 must continue to maintain an existing Plan. A facility owner or operator who wants to take advantage of the 2002, 2006, 2008, and 2009 regulatory changes may do so, but will need to modify the existing Plan accordingly. Additionally, an owner or operator may need to amend the Plan prior to the new compliance date to address facility modifications for which more stringent requirements apply.

implement the streamlined amendments to the SPCC rule.

The Agency seeks comment on the proposed compliance date by which owners and operators would be required to prepare, amend, and implement SPCC Plans in accordance with amendments to the SPCC rule. Any alternative dates suggested must include appropriate rationale and supporting data for the Agency to be able to consider them for final action.

#### *Exceptions to the Proposal To Extend Compliance Date by One Year*

The Agency is not proposing to extend the compliance date for drilling, production and workover facilities that are offshore or that have an offshore component; or for onshore facilities required to have and submit FRPs. The Agency is particularly concerned about the potential for immediate environmental impacts resulting from oil spills to waters of the U.S. or adjoining shorelines posed by these facilities. All of these facilities have potentially significant quantities of oil that could be discharged to navigable waters or adjoining shorelines. Offshore drilling, production and workover facilities (and those with an offshore component) have a constant flow of oil associated with them and discharges could be in amounts that far exceed the oil storage capacity of the facility. As in the case of the recent Gulf of Mexico oil spill, the Agency is concerned that any potential oil discharge may be limited only by the capacity and pressure of the underground petroleum reservoir. The Agency's concern regarding these facilities is reflected in the fact that they have a greater number of requirements under the SPCC rule because of their location over waters of the U.S. or adjoining shorelines (40 CFR 112.11). In addition to those facilities completely offshore, the Agency has identified many onshore facilities with offshore components, as in the case of over-water production platforms. While these facilities have their tank batteries located onshore, their wellhead and portions of the flow lines are below the surface of the water. Offshore components include, but are not limited to, flow lines, gathering lines, wellheads, shut in valves, pressure control and sensing devices, cathodic protection devices and related piping and appurtenances. Because the Agency is equally concerned with the potential for immediate environmental impacts resulting from oil spills from a facility's offshore components, it is also excluding these facilities from the proposed extension. FRP facilities are those with storage capacities of 1

million gallons or more that could cause substantial harm, or those with storage capacities at or above 42,000 gallons and that transfer oil to or from a vessel over water. The Agency is proposing to exclude all onshore FRP facilities from the extension because of their large oil storage capacities and their potential to cause substantial harm in the event of a discharge as identified under the FRP regulation (40 CFR 112.20).

Today's proposed rule amends the current § 112.3(b)(1) to maintain the existing compliance date for this subset of facilities, and combines it with the current § 112.3(c) provision to indicate that the existing compliance date also applies to mobile or portable facilities within this subset:

- Maintain the existing compliance date for a drilling, production and workover facility, including a mobile or portable facility, that is offshore or that has an offshore component; or of an onshore facility required to have and submit an FRP, that was in operation on or before August 16, 2002, that requires the owner or operator to make any necessary amendments to an SPCC Plan and fully implement the amended Plan by November 10, 2010.<sup>6</sup>
- Maintain the existing compliance date for a drilling, production and workover facility, including a mobile or portable facility, that is offshore or that has an offshore component; or of an onshore facility required to have and submit an FRP, that came into operation after August 16, 2002, but before November 10, 2010, that requires the owner or operator to prepare and fully implement an SPCC Plan on or before November 10, 2010.
- Maintain the existing compliance date for a facility (except an oil production facility<sup>7</sup>) that is either: a drilling, production and workover facility, including a mobile or portable facility, that is offshore or that has an offshore component; or an onshore facility required to have and submit an FRP, that becomes operational after November 10, 2010, that requires the owner or operator to prepare and implement an SPCC Plan before beginning operations.
- Incorporate language under the current 112.3(c) to maintain the existing compliance date for mobile or portable facilities that fall within this subset of

facilities (such as a barge mounted offshore drilling or workover rig), and maintains the language that allows mobile or portable facilities to prepare a general Plan.

The Agency seeks comment on the proposed exceptions to the compliance date extension. Any alternative exceptions suggested must include appropriate rationale and supporting data for the Agency to be able to consider them for final action.

#### *Oil Production Facilities Beginning Operations After the Compliance Date*

The Agency is proposing to amend the current § 112.3(b)(2) to distinguish the two separate compliance dates that would apply to oil production facilities that become operational after the proposed compliance dates. The Agency is also moving this provision to § 112.3(c). These changes are intended to reflect the amendments and rearranged provisions for § 112.3(a), (b), and (c). The new § 112.3(c) would be amended to:

- Maintain the existing compliance date for an oil production facility that is offshore or that has an offshore component; or of an onshore oil production facility required to submit an FRP, that becomes operational after November 10, 2010, and could reasonably be expected to have a discharge as described in § 112.1(b), that requires the owner or operator to prepare and implement a Plan within six months after beginning operations.
- Amend the compliance date for an onshore oil production facility (i.e. one that is not required to submit an FRP) that becomes operational after November 10, 2011, and could reasonably be expected to have a discharge as described in § 112.1(b), that requires the owner or operator to prepare and implement a Plan within six months after beginning operations.

The Agency seeks comment on the proposed extension of the compliance date by which owners and operators would be required to prepare, amend, and implement SPCC Plans in accordance with amendments to the SPCC rule. Any alternative dates or approaches suggested must include appropriate rationale and supporting data for the Agency to be able to consider them for final action.

#### *Proposal for Facilities With Milk Containers, Associated Piping and Appurtenances*

The Agency is proposing to further delay the compliance date for the owners and operators of facilities with milk containers, associated piping and appurtenances that are constructed

according to the current applicable 3–A Sanitary Standards, and subject to the current applicable Grade “A” Pasteurized Milk Ordinance (PMO) or a State dairy regulatory requirement equivalent to the current applicable PMO. The Agency is taking this action for facilities that would be affected by any final determination on the proposed rule to exempt these milk containers from SPCC requirements (74 FR 2461; January 15, 2009). The compliance date would be delayed to one year from the effective date of a final rule addressing the SPCC requirements specifically for these milk containers, associated piping and appurtenances, or as specified by a rule that otherwise establishes a new compliance date for these facilities.<sup>8</sup> The Agency would establish the new compliance date and publish it in the **Federal Register** as part of any final action on the proposed exemption. The delay for these facilities is intended to provide the owner or operator of the facility the opportunity to fully understand any new regulatory amendments for milk containers, associated piping and appurtenances. Today's proposed rule amends § 112.3(b)(2) to:

- Further delay the compliance date for any facility that has milk containers, associated piping and appurtenances that are constructed according to the current applicable 3–A Sanitary Standards, and subject to the current applicable Grade “A” Pasteurized Milk Ordinance (PMO) or a State dairy regulatory requirement equivalent to the current applicable PMO. The delay would be for one year from the effective date of a final rule addressing the SPCC requirements specifically for these milk containers, associated piping and appurtenances, or as specified by a rule that otherwise establishes a new compliance date for these facilities.

The Agency seeks comment on the proposed delay of the compliance date by which owners and operators of facilities that have milk containers, associated piping and appurtenances would be required to prepare, amend, and implement SPCC Plans in accordance with amendments to the SPCC rule. Any alternative dates or approaches suggested must include appropriate rationale and supporting data for the Agency to be able to consider them for final action.

<sup>6</sup> As noted previously, owners or operators of facilities in operation before August 16, 2002 must continue to maintain existing SPCC Plans.

<sup>7</sup> On December 5, 2008 (73 FR 74236) EPA finalized an amendment to allow a new oil production facility (i.e., one that becomes operational after the compliance date) a period of six months after the start of operations to prepare and implement an SPCC Plan.

<sup>8</sup> As noted previously in § 112.3(a) and (b)(1), to be eligible for the compliance extension, owners or operators of facilities in operation before August 16, 2002 must continue to maintain existing SPCC Plans. This includes facilities with milk containers, associated piping and appurtenances.

### *Alternative Approach to the Proposed Compliance Date Extension*

While the Agency believes that a one-year compliance date extension is appropriate, as discussed previously, the Agency also is requesting comments on an alternative approach to extend the compliance date for these facilities. This approach would extend the compliance date to either May 10, 2011 or August 10, 2011 for all SPCC regulated facilities, except for: drilling, production and workover facilities that are offshore or that have an offshore component, or for onshore facilities required to have and submit an FRP, which must comply by November 10, 2010. This alternative approach would not impact the Agency's proposal to delay the compliance date for facilities with milk containers, associated piping and appurtenances that are constructed according to the current applicable 3-A Sanitary Standards, and subject to the current applicable Grade "A" Pasteurized Milk Ordinance (PMO) or a State dairy regulatory requirement equivalent to the current applicable PMO.

Specifically, for SPCC-regulated facilities, the Agency believes that a compliance date extension is appropriate for these facilities because of the multiple regulatory amendments to the SPCC rule. However, we are also requesting comment on whether it would be appropriate to consider a shorter compliance date extension, such as either six or nine months for them. In considering the shorter compliance date extension, we request comments as to the type of criteria to consider, such as discharge history, size and type of facility, the ability to come into compliance, or the potential risk presented. This extension would not apply to drilling, production and workover facilities that are offshore or that have an offshore component, or for onshore facilities required to have and submit an FRP, which must comply by November 10, 2010.

The Agency seeks comment on the alternative approach to the proposed compliance date extension. Any alternative dates or approaches suggested must include appropriate rationale and supporting data for the Agency to be able to consider them for final action.

### Other Considerations

If an owner or operator of an SPCC-regulated facility requires additional time to comply with the SPCC rule, he may submit a written request to the Regional Administrator in accordance with § 112.3(f). Such requests may be

granted if the Regional Administrator finds that the owner or operator cannot comply with all SPCC requirements by the compliance date as a result of either non-availability of qualified personnel, or delays in construction or equipment delivery beyond his control and without the fault of such owner or operator.

It should be noted that these proposed compliance date amendments would affect only the requirements of the July 2002, December 2006, December 2008, and November 2009 SPCC rule amendments (67 FR 47042, July 17, 2002; 71 FR 77266, December 26, 2006; 73 FR 74236, December 5, 2008; and 74 FR 29136, November 13, 2009) that are new (*i.e.*, requirements that did not exist or were not in effect prior to the 2002 amendments) or more stringent compliance obligations to those that were in effect in the 1973 SPCC rule. Provisions that provide regulatory relief to facilities are applicable as of the effective date of the amendment and would not require revisions to existing Plans "to ensure compliance" (*see* § 112.3). However, the facility owner or operator must amend the SPCC Plan to include new or more stringent provisions by the compliance date.

### V. Statutory and Executive Order Reviews

#### A. Executive Order 12866: Regulatory Planning and Review

Under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), this action has been determined to be a "significant regulatory action." This rule was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB's recommendations have been documented in the docket for this action.

#### B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* This proposed rule would merely extend the compliance date for certain facilities subject to the rule. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 112 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050-0021. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

#### 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 by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (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, I certify that this proposed action will 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 seeks to extend the compliance date in § 112.3(a) for most facilities by one year and to delay the compliance date in § 112.3(b)(2) for facilities with milk containers, associated piping and appurtenances that meet certain conditions for one year from the effective date of a final rule addressing the SPCC requirements specifically for these containers, or as specified by a rule that otherwise establishes a compliance date for these facilities. The changes in the final November 2009 amendments were very limited, and the December 2008

amendments offered compliance options and regulatory burden relief. We have therefore concluded that today's proposed rule will relieve regulatory burden for all affected small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### *D. Unfunded Mandates Reform Act*

This proposed action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule would merely extend the compliance date for most facilities subject to the rule.

#### *E. Executive Order 13132: Federalism*

This proposed rule does not have federalism implications. It will 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.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249,

November 9, 2000). The proposed rule would not significantly or uniquely affect communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

#### *G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risk*

This proposed action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this proposed action present a disproportionate risk to children. The public is invited to submit comments or identify peer-reviewed studies and data that assess the effects of early life exposure to oil as affected by the proposed revision to the compliance date.

#### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action 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. The overall effect of this action is to decrease the regulatory burden on facility owners or operators subject to its provisions.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. 104–113, 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 (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

#### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

#### **List of Subjects in 40 CFR Part 112**

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

Dated: July 28, 2010.

**Lisa P. Jackson,**  
*Administrator.*

For the reasons set forth in the preamble, title 40, chapter I, 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 facility, or mobile or portable 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, and implement the amended Plan no later than November 10, 2011. If such a facility becomes operational after August 16, 2002, through November 10, 2011, 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 November 10, 2011. If such a facility (excluding oil production facilities) becomes operational after November 10, 2011, 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. You are not required to prepare a new Plan each time you move a mobile or portable facility to a new site; the Plan may be general. 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 mobile or portable facility is in a fixed (non-transportation) operating mode.

(b) Notwithstanding the provisions of paragraph (a) of this section:

(1) If your drilling, production or workover facility, including a mobile or portable facility, is offshore or has an offshore component; or your onshore facility is required to have and submit a Facility Response Plan pursuant to 40 CFR 112.20(a), and 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, and implement the amended Plan no later than November 10, 2010. If such a facility becomes operational after August 16, 2002, through November 10, 2010, 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 November 10, 2010. If such a facility (excluding oil production facilities) becomes operational after November 10, 2010, 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. You are not required to prepare a new Plan each time you move a mobile or portable facility to a new site; the Plan may be general. 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 mobile or portable facility is in a fixed (non-transportation) operating mode.

(2) If your facility has milk containers, associated piping and appurtenances constructed according to current applicable 3-A Sanitary Standards, and subject to current applicable Grade "A" Pasteurized Milk Ordinance (PMO) or a State dairy regulatory requirement equivalent to current applicable PMO, the compliance date described in paragraphs (a) and (b)(1) of this section shall be one year from the effective date

of a final rule addressing SPCC requirements specifically for these milk containers, associated piping and appurtenances; or until a rule that otherwise establishes the date by which you must comply with the provisions of this part.

(c) If your oil production facility as described in paragraph (a) of this section becomes operational after November 10, 2011, or as described in paragraph (b)(1) of this section becomes operational after November 10, 2010, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan within six months after you begin operations.

\* \* \* \* \*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 131

[EPA-HQ-OW-2009-0596; FRL-9185-2]

RIN 2040-AF11

### Water Quality Standards for the State of Florida's Lakes and Flowing Waters; Supplemental Notice of Data Availability and Request for Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Supplemental notice of data availability and request for comment.

**SUMMARY:** This action is a supplemental notice of data availability and a request for comment related to EPA's January 26, 2010, notice of proposed rulemaking (NPRM), proposing numeric nutrient water quality criteria to protect aquatic life in lakes and flowing waters within the State of Florida. In the January 2010 NPRM, EPA proposed to classify Florida's streams into four regions (referred to in the proposed rule as "Nutrient Watershed Regions") for application of total nitrogen (TN) and total phosphorus (TP) criteria. Streams within each of these regions (Panhandle, Bone Valley, Peninsula and North Central) reflect similar geographical characteristics including phosphorus-rich soils, nutrient concentrations and nutrient ratios. In this notice, EPA is requesting comment on revised stream region boundaries based on additional information about watershed delineations and phosphorus-rich geological formations in Florida. Based on comments and additional information, this revised regionalization approach would result in five Nutrient

Watershed Regions for Florida's streams and a clarification of certain watershed boundaries for the Bone Valley and Peninsula regions. EPA is also requesting comment on basing the TN and TP criteria for the nutrient watershed regions on a combination of the 75th and 90th percentile values (depending on regions) of the benchmark sites outlined in the alternate approach at proposal. EPA is continuing to consider the primary approach proposed in January 2010 to use the 75th percentile of sites with healthy biological condition as measured by the Stream Condition Index (SCI). The January 2010 proposal also proposed application of the Vollenweider equation to ensure that nutrient criteria in streams are protective of downstream lakes and requested comment on alternative approaches such as the BATHTUB model and whether there should be an allowance for use of other models that are demonstrated to be protective and scientifically defensible. Today's notice also requests comment on using the BATHTUB model in place of the Vollenweider equation for deriving both TP and TN criteria to protect downstream lakes, allowing the use of alternative models under certain circumstances, and providing for an alternative approach to protect downstream lakes when limited data are available that would use the lake criteria themselves as criteria for upstream waters flowing into the lake. EPA is seeking comment on alternative stream regionalization approaches, use of the benchmark dataset to derive criteria, and derivation of lake downstream protection values discussed in more detail below, and will consider the comments received before finalizing the proposed rule, "Water Quality Standards for the State of Florida's Lakes and Flowing Waters." This supplemental notice focuses solely on the delineation of stream nutrient regions, resulting criteria associated with two approaches (EPA's SCI-based approach and the alternative benchmark distribution approach), and protection of downstream lakes in Florida. EPA is not soliciting comment on any other provisions of the January 2010 proposal.

**DATES:** Comments must be received on or before *September 2, 2010*.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OW-2009-0596, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. *E-mail:* [ow-docket@epa.gov](mailto:ow-docket@epa.gov).