

CALIFORNIA—PM-10

| Designated area | Designation | | Classification | |
|---|-------------------------|---------------------|----------------|----------|
| | Date | Type | Date | Type |
| Imperial County: Imperial Valley planning area | November 15, 1990 | Nonattainment | 9/8/04 | Serious. |

* * * * *
 [FR Doc. 04-18378 Filed 8-10-04; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112
[OPA-2004-0003; FRL-7800-2]
RIN 2050-AC62

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

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or we) is today extending by eighteen months certain upcoming compliance dates for the July 2002 Spill Prevention Control and Countermeasure (SPCC or Plan) amendments. The dates affected by today's final rule are the date for a facility to amend its Plan and the date for a facility to implement that amended Plan in a manner that complies with the newly amended requirements (or, in the case of facilities becoming operational after August 16, 2002, prepare and implement a Plan that complies with the newly amended requirements). We are also amending the compliance deadline for onshore and offshore mobile facilities. In light of a recent partial settlement of litigation involving the July 2002 amendments, we are extending the compliance dates to, among other things, provide sufficient time for the regulated community to undertake the actions necessary to update (or prepare) their Plans. The final rule is also intended to alleviate the need for individual extension requests.

DATES: This final rule is effective August 11, 2004.

ADDRESSES: The docket for this rulemaking is located in the EPA Docket Center at 1301 Constitution Ave., NW., EPA West, Suite B-102, Washington, DC 20460. The docket number for the final rule is OPA-2004-0003. The docket is

contained in the EPA Docket Center and is available for inspection by appointment only, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. You may make an appointment to view the docket by calling 202-566-0276. You may copy a maximum of 100 pages from any regulatory docket at no cost. If the number of pages exceeds 100, however, we will charge you \$0.15 for each page after 100. The docket will mail copies of materials to you if you are outside of the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Call 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 final rule, contact Hugo Paul Fleischman at 703-603-8769 (fleischman.hugo@epa.gov); or Mark W. Howard at 703-603-8715 (howard.markw@epa.gov), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0002, Mail Code 5203G.

SUPPLEMENTARY INFORMATION: This final rule concerns an eighteen-month extension of the current deadlines contained in 40 CFR 112.3(a) and (b), and an amendment of the compliance dates for 40 CFR 112.3(c). The contents of this preamble are as follows:

- I. General Information
- II. Entities Affected by This Final Rule
- III. Statutory Authority
- IV. Background
- V. Today's Action
- VI. Statutory and Executive Order Reviews

I. General Information

Introduction. For the reasons explained in Section V of this notice, the Environmental Protection Agency (EPA or we) is today extending by eighteen months the dates in 40 CFR 112.3(a) and (b) for a facility to amend and implement its Plan that complies with the newly amended requirements (or, in the case of a facility becoming

operational after August 16, 2002, prepare and implement a Plan in a manner that complies with the newly amended requirements). Today's rule extends these deadlines for eighteen months from the dates promulgated in the April 17, 2003, SPCC rule amendment. See 68 FR 18890. Since today's action extends the compliance dates, it is not necessary to file a request for an extension of time pursuant to § 112.3(f) beyond the existing compliance dates. If a facility owner or operator has already filed for an extension, such a request is invalidated by today's action. If an extension beyond the additional eighteen months is necessary, a request for an extension of time pursuant to § 112.3(f) must be submitted.

We are also amending the compliance deadlines in 40 CFR 112.3(c) for mobile facilities.

How Can I Get Copies Of The Background Materials Supporting Today's Final Rule or Other Related Information?

1. EPA has established an official public docket for this final rule under Docket ID No. OPA-2004-0003. The official public docket consists of the documents specifically referenced in this final rule and other information related to this final rule. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center located at 1301 Constitution Ave., NW., EPA West Building, Room B-102, Washington, DC 20004.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <http://www.epa.gov/fedrgstr>.

You may use EPA Dockets at <http://www.epa.gov/edocket/> to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in

the system, select "search," then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's

policy is that copyrighted material will not be placed in EPA's electronic public docket, but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the

system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

II. Entities Affected by This Rule

| Industry category | NAICS code |
|--|---|
| Crop and Animal Production | 111-112 |
| Crude Petroleum and Natural Gas Extraction | 211111 |
| Coal Mining, Non-Metallic Mineral Mining and Quarrying | 2121/2123/213114/213116 |
| Electric Power Generation, Transmission, and Distribution | 2211 |
| Heavy Construction | 234 |
| Petroleum and Coal Products Manufacturing | 324 |
| Other Manufacturing | 31-33 |
| Petroleum Bulk Stations and Terminals | 42271 |
| Automotive Rental and Leasing | 5321 |
| Heating Oil Dealers | 454311 |
| Transportation (including Pipelines), Warehousing, and Marinas | 482-486/488112-48819/4883/48849/492-493/71393 |
| Elementary and Secondary Schools, Colleges | 6111-6113 |
| Hospitals/Nursing and Residential Care Facilities | 622-623 |

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

III. Statutory 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.

IV. Background

On July 17, 2002, at 67 FR 47042, EPA published final amendments to the SPCC rule. The rule was effective August 16, 2002. The rule included compliance dates in § 112.3(a) and (b); however, the original compliance dates were extended for eighteen months on April 17, 2003 (68 FR 18890).

V. Today's Action

EPA is extending by an additional eighteen months the compliance dates in § 112.3(a) and (b), and amending the compliance deadline in § 112.3(c). Thus, an onshore or offshore facility that: (1) Was in operation on or before August 16, 2002, must maintain its Plan, but must amend it, if necessary to ensure compliance, on or before February 17, 2006, and must implement the amended Plan as soon as possible, but not later than August 18, 2006; (2) becomes

operational after August 16, 2002, through August 18, 2006, and could reasonably be expected to have a discharge as described in 40 CFR 112.1(b), must prepare a Plan on or before August 18, 2006, and fully implement it as soon as possible, but not later than August 18, 2006; and (3) becomes operational after August 18, 2006, and could reasonably be expected to have a discharge as described in 40 CFR 112.1(b), must prepare and implement a Plan before it begins operations. An onshore or offshore mobile facility must amend its Plan, if necessary, and implement such amendments by August 18, 2006. Today's rule is immediately effective; EPA is invoking the exception to the 30-day notice requirement in the Administrative Procedure Act because the purpose of the rulemaking is to relieve a restriction (5 U.S.C. 553(d)(1)). Furthermore, the existing compliance date for amending a Plan is August 17, 2004, and a 30-day notice requirement will extend past that date.

After the publication of the July 17, 2002, final rule amending the SPCC regulation (67 FR 47042), several members of the regulated community filed legal challenges to certain aspects of the rule. *See, American Petroleum Institute v. Leavitt et al.*, No. 1:102CV02247 PLF and consolidated cases (D.D.C. filed November 14, 2002).¹ Settlement discussions between EPA

and the plaintiffs have led to an agreement on all issues except one. In a separate notice, EPA recently published clarifications developed by the Agency during the course of settlement proceedings (and which provided the basis for the settlement agreement) regarding the SPCC regulation. *See* 69 FR 29728, May 25, 2004.

We believe it is appropriate to provide members of the regulated community with sufficient time to understand these clarifications and be able to incorporate them, as appropriate, in preparing and updating their SPCC Plans in accordance with the 2002 amendments. Therefore, we believe that the current compliance dates are insufficient for this purpose, and that it would be inefficient to use scarce Agency resources to address this problem by processing individual extension requests.

*A. Comments*²

Extension of Time. On June 17, 2004, EPA proposed to extend certain upcoming SPCC compliance dates by 12 months. The majority of commenters³ supported this one-year compliance deadline extension to allow the

¹Lead plaintiffs in the cases were American Petroleum Institute (API), Marathon Oil Co., and the Petroleum Marketers Association of America (PMAA).

²This section, and Section B below, contain a summary of the comments received on the proposal, and the Agency's responses to such comments. For more detailed and additional information, see the response-to-comments document in the docket for today's rule.

³Commenters mainly represented oil industry interests, as well as a number of other industrial sectors (agriculture, paints and coatings, electrical, construction materials, transportation, etc.) and professional engineers.

regulated community sufficient time to understand and incorporate recent clarifications of the SPCC rule. However, several commenters suggested extension time frames longer than one year, one commenter believed that no extension was necessary, and still another commenter suggested that EPA withdraw the SPCC rule altogether.

Commenters who recommended extending compliance deadlines confirmed the Agency's view at the time of proposal that an extension is appropriate to provide the regulated community with sufficient time to understand and incorporate, as appropriate, the clarifications to the SPCC rule when preparing and updating their SPCC Plans in accordance with the 2002 amendments. Commenters also agreed that an extension is appropriate to eliminate the need for individual extension requests during this time. In addition, commenters also supported the extension of the compliance deadlines in order to provide more time to the regulated community to perform implementation-related activities such as staff training; fiscal budgeting; obtaining professional engineer certification; and to prevent a shortage of materials, equipment, and technical expertise to implement the Plans. Numerous commenters stated that the additional time would also be useful in order to receive and incorporate additional clarification and guidance on the SPCC rule from EPA.

As noted above, several commenters suggested extensions longer than the proposed one-year extension. These suggestions ranged from 18 months to two years to "a much greater time" for facilities to amend and/or implement their Plan. Some commenters cited a variety of reasons for a longer extension, including issues cited above, as well as weather-related concerns for a February implementation deadline, a preference for longer-term budgetary planning, time to develop industry-specific best management practices, and a need for an additional construction season. Some commenters requested that compliance dates be extended until after the completion of a further rule revision. Finally, a number of commenters suggested a longer time extension for further clarification and resolution of issues outside the scope of the litigation settlement discussions; that is, commenters were concerned about the number and scope of technical issues that EPA plans to clarify, and suggested that more than 12 months would be necessary for EPA to develop guidance and for facilities to make appropriate changes to their Plans.

Scope of the Extension. A few commenters requested that an extension of the compliance deadlines also apply to the facilities described in § 112.3(c), mobile facilities. Another commenter requested that EPA reaffirm the statement that the Agency made in the preamble to the April 17, 2003, final rule, which clarified that the extension granted at that time applied only to "new or more stringent compliance obligations" imposed by the July 2002 amendments and not to provisions in the amendments that provide regulatory relief.

Some commenters expressed concern that EPA would not be able to publish the final rule extending the deadlines by July 17, 2004, in which case they requested that the Agency issue an interim final rule by that date, extending the deadlines as long as necessary to finalize this proposed rule.

B. Response to Comments

Extension of Time in General. In reviewing the comments, we have been persuaded that more than one year is appropriate for facilities to come into compliance with the SPCC amendments. This is due to the need to provide sufficient time for the regulated community to take actions necessary to update (or prepare) their Plans in light of the partial settlement of litigation involving the July 2002 amendments.

However, two commenters did not support any extension. One commenter expressed a concern that political interests motivated the Agency's decision to extend the compliance deadlines. Accordingly, the commenter did not support an extension and instead stated that the compliance deadline should be, at the latest, January 1, 2005, although no rationale for this date was given. The Agency reiterates that the compliance date extension is intended to give members of the regulated community sufficient time to understand and incorporate recent clarifications to the SPCC rule.

Another commenter opposed promulgating the extension of the compliance deadline and instead suggested that EPA withdraw the revised final SPCC rule (67 FR 47042) entirely. The commenter suggested that EPA repropose the SPCC rule employing full notice and comment rulemaking procedures, and until then rely on the 1973 version of the SPCC rule (38 FR 34164). The commenter suggested the proposed rule be withdrawn because he felt: (1) EPA failed to use a single notice and single comment rulemaking procedure on the SPCC rule, (2) the proposed rule is necessitated by an incorrect economic analysis of the

impact of the 2002 amendments, and (3) the proposed rule is flawed by lack of closure regarding the definition of "navigable waters." EPA does not believe that any of these issues provide a legitimate justification for withdrawing the revised SPCC rule. Moreover, these issues are not within the scope of today's rulemaking. The Agency confirms its belief that extending the compliance dates is necessary.

Extension of Time. Although the majority of commenters indicated that a one-year extension was warranted, several commenters made a compelling case for a time frame different than the proposed one-year extension. With respect to comments requesting additional guidance, the Agency notes that in an effort separate from this rulemaking, EPA has been working to assess the need for guidance on implementing various areas relating to the 2002 SPCC amendments and will continue this process, as appropriate.

In situations where the extension does not provide sufficient relief for an individual facility, that facility may seek an extension under 40 CFR 112.3(f), where applicable. It is EPA's belief, however, that the eighteen-month extension will provide enough relief to prevent the Agency from again being faced with the prospect of an overwhelming number of requests for individual extensions under § 112.3(f).

Scope of the Extension. With regard to the comments asking for a revised compliance date for the requirements in § 112.3(c), we are persuaded that the compliance deadlines for onshore and offshore mobile facilities should also be amended because such facilities face the same challenges to amend and implement their Plans in light of the partial settlement of litigation.

In response to the commenter asking EPA to reaffirm the statement that the Agency made in the preamble to the April 17, 2003, final rule, EPA restates that to the extent that the July 2002 rule imposes new or more stringent compliance obligations than in the 1973 SPCC rule, the deadlines in 40 CFR 112.3(a) and (b) for the fulfillment of those obligations are again extended under today's final rule, as well as the deadline in 40 CFR 112.3(c). A provision that provides regulatory relief in the revised rule is not affected by today's compliance deadline extensions because such provisions are not addressed by 40 CFR 112.3(a), (b), or (c), and these are not provisions for which it would be "necessary" to amend existing Plans "to ensure compliance with" the July 2002 amendments.

In response to the commenter who recommended that EPA either publish this final rule by July 17, 2004, or issue an interim final rule to extend the deadlines as long as necessary to finalize this rule, EPA states that it is aware of the scheduling concerns regarding the extension of compliance deadlines and believes it has issued the final rule such that the regulated community will not be burdened with preparing individual extension requests.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866—OMB 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.

Pursuant to the terms of Executive Order 12866, it has been determined that this final rule is a “significant regulatory action” because it (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. As such, this action was submitted to the Office of Management and Budget (OMB) for review. Changes made in response to OMB suggestions or recommendations are documented in the docket for today's final rule.

B. Paperwork Reduction Act

This final 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 (R.F.A.) 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 final 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 final 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 which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action does 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 analysis is to identify and address regulatory alternatives “which minimize any significant economic impact of the proposed rule on small entities.” 5 U.S.C. Sections 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 final rule will temporarily reduce regulatory burden on facilities by extending for eighteen months the compliance dates in § 112.3(a) and (b), as well as amend the compliance deadlines in § 112.3(c). We have therefore concluded that today's final rule would relieve regulatory burden for 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 final 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. Today's final rule will reduce burden and costs on all facilities.

EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. As explained above, the effect of the final rule is to reduce burden and costs for regulated 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 final 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), EPA believes that States are free to 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 program and recognizes that some States have more stringent requirements. 56 FR 54612 (Oct. 22, 1991). This final rule will not preempt state law or regulations. Thus, Executive Order 13132 does not apply to this final rule.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.”

This final rule does not have tribal implications, as specified in Executive Order 13175. It does not impose any new requirements on tribal officials nor does it impose substantial direct compliance costs on them. This rule does not create a mandate for tribal governments, nor does it impose any enforceable duties on these entities. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045—Protection of Children From Environmental Health & Safety Risks

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 final 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 final 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 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 final rule does not involve technical standards. Therefore, NTTA is inapplicable.

J. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 840(2). This rule will be effective August 11, 2004.

List of Subjects in 40 CFR Part 112

Environmental protection, Fire prevention, Flammable and combustible materials, Materials handling and storage, Oil pollution, Oil spill prevention, Oil spill response, Penalties, Petroleum, Piping, Reporting and recordkeeping requirements, Tanks, Transfer operations, Water pollution control, Water resources.

Dated: August 5, 2004.

Michael O. Leavitt,
Administrator.

■ For the reasons set out in the preamble, title 40 CFR, chapter I, part 112 of the Code of Federal Regulations, is amended as follows:

PART 112—OIL POLLUTION PREVENTION

■ 1. The authority 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.

Subpart A—Applicability, Definitions, and General Requirements for All Facilities and All Types of Oils

■ 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, on or before February 17, 2006, and must implement the amended Plan as soon as possible,

but not later than August 18, 2006. If your onshore or offshore facility becomes operational after August 16, 2002, through August 18, 2006, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare a Plan on or before August 18, 2006, and fully implement it as soon as possible, but not later than August 18, 2006.

(b) If you are the owner or operator of an onshore or offshore facility that becomes operational after August 18, 2006, 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 August 18, 2006. If your onshore or offshore mobile facility becomes operational after August 18, 2006, 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.

* * * * *

[FR Doc. 04-18370 Filed 8-10-04; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-2004-0145; FRL-7362-1]

Forchlorfenuron; N-(2-chloro-4-pyridinyl)-N'-phenylurea; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of forchlorfenuron; N-(2-chloro-4-pyridinyl)-N'-phenylurea in or on

almond, apple, blueberry, cranberry, fig, grapes, kiwifruit, olive, pear, and plums (fresh). Siemer and Associates Incorporated, agent for KIM-C1, LLC requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The tolerance will expire on May 31, 2006.

DATES: This regulation is effective August 11, 2004. Objections and requests for hearings must be received on or before October 12, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket ID number OPP-2004-0145. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other 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 in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Cynthia Giles-Parker, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7740; e-mail address: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food Manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide

for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (<http://www.epa.gov/edocket/>), you may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at <http://www.gpoaccess.gov/ecfr/>. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at <http://www.epa.gov/opptsfrs/home/guidelin.htm/>.

II. Background and Statutory Findings

In the **Federal Register** of April 7, 2004 (69 FR 18375)(FRL-7349-9), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7G4906) by KIM-C1, LLC, c/o Siemer and Associates, Inc., 4672 West Jennifer Street, Suite 103, Fresno, CA 93722. This notice included a summary of the petition prepared by KIM-C1, the registrant.

The petition requested that 40 CFR 180.569 be amended by establishing an extension of a time-limited tolerance for residues of the fungicide forchlorfenuron; N-(2-chloro-4-pyridinyl)-N'-phenylurea, in or on the raw agricultural commodities almonds, apples, blueberries, figs, grapes, kiwi fruit, pears, and plums at 0.01 parts per million (ppm). The tolerance will expire on May 31, 2006.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in