

or restrict the requirements for take for nonsubsistence uses.

(1) If the timing of a regularly scheduled meeting of the affected Regional Council so permits without incurring undue delay, the Board may seek Council recommendations on the proposed emergency special action. Such a Council recommendation, if any, will be subject to the requirements of § 18(a)(4).

(2) The emergency action will be effective when directed by the Board, may not exceed 60 days, and may not be extended unless the procedures for adoption of a temporary special action, as set forth in paragraph (b) of this section, have been followed.

(b) *Temporary special actions.* After adequate notice and public hearing, the Board may temporarily close or open public lands for the taking of fish and wildlife for subsistence uses, or modify the requirements for subsistence take, or close public lands for the taking of fish and wildlife for nonsubsistence uses, or restrict take for nonsubsistence uses.

(1) The Board may make such temporary changes only after it determines that the proposed temporary change will not interfere with the conservation of healthy fish and wildlife populations, will not be detrimental to the long-term subsistence use of fish or wildlife resources, and is not an unnecessary restriction on nonsubsistence users. The Board may also reopen public lands to nonsubsistence uses if new information or changed conditions indicate that the closure is no longer warranted.

(i) Prior to implementing a temporary special action, the Board will consult with the State of Alaska and the Chairs of the Regional Councils of the affected regions.

(ii) If the timing of a regularly scheduled meeting of the affected Regional Council so permits without incurring undue delay, the Board will seek Council recommendations on the proposed temporary special action. Such Council recommendations, if any, will be subject to the requirements of § 18(a)(4).

(2) The length of any temporary action will be confined to the minimum time period or harvest limit determined by the Board to be necessary under the circumstances. In any event, a temporary opening or closure will not extend longer than the end of the current regulatory cycle.

(c) The Board may reject a request for either an emergency or a temporary special action if the Board concludes that there are no time-sensitive circumstances necessitating a regulatory change before the next regular proposal

cycle. However, a special action request that has been rejected for this reason may be deferred, if appropriate and after consultation with the proponent, for consideration during the next regular proposal cycle. The Board will consider changes to customary and traditional use determinations in subpart C of this part only during the regular proposal cycle.

(d) The Board will provide notice of all regulatory changes adopted via special action by posting the change on the Office of Subsistence Management Web site (<http://alaska.fws.gov/asm/index.cfm>). When appropriate, notice may also include distribution of press releases to newspapers, local radio stations, and local contacts, as well as direct notification to the proponent and interested parties. The Board will publish notice and reasons justifying the special action in the **Federal Register** as soon as practicable.

(e) The decision of the Board on any proposed special action will constitute its final administrative action.

(f) Regulations authorizing any individual agency to implement closures or restrictions on public lands managed by the agency remain unaffected by the regulations in this part.

(g) Fish and wildlife may not be taken in violation of any restriction, closure, or change authorized by the Board.

Dated: July 13, 2010.

**Ken Salazar,**

*Secretary of the Interior, Department of the Interior.*

**Beth G. Pendleton,**

*Regional Forester, USDA—Forest Service.*

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 112**

**[EPA-HQ-OPA-2009-0880; FRL-9213-8]**

**RIN 2050-AG59**

### **Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Rule—Compliance Date Amendment**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA or the Agency) is promulgating a new compliance date of November 10, 2011 by which certain facilities must prepare or amend their

Spill Prevention, Control, and Countermeasure (SPCC) Plans, and implement those Plans, providing an additional year for certain facilities. This action allows additional time for those affected in the regulated community to understand the revisions to the SPCC rule finalized in December 2008 and November 2009. However, EPA is not extending the compliance date for drilling, production or workover facilities that are offshore or that have an offshore component, or for onshore facilities required to have and submit Facility Response Plans (FRPs). Additionally, the Agency is delaying the compliance date by which facilities must address milk and milk product 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 date by which the owner or operator of a facility must comply with the SPCC requirements for these milk and milk product containers is delayed one year from the effective date of a final rule specifically addressing these milk and milk product containers, associated piping and appurtenances, or as specified by a rule that otherwise establishes a compliance date for these facilities. Both the extension and delay of the compliance date provide time for certain facilities to undertake the actions necessary to prepare or amend their SPCC Plans, as well as implement them.

**DATES:** This final rule is effective on October 14, 2010.

**ADDRESSES:** The public docket for this rulemaking, Docket ID No. EPA-HQ-OPA-2009-0880, contains the information related to this rulemaking, including the response to comment document. All documents in the docket are listed in the index at <http://www.regulations.gov>. Although listed in the index, some information may not be publicly available, such as Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the EPA Docket, 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 of 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 final rule, contact either Vanessa Principe at (202) 564-7913 (*principe.vanessa@epa.gov*) or Mark W. Howard at (202) 564-1964 (*howard.markw@epa.gov*), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460-0002, Mail Code 5104A.

**SUPPLEMENTARY INFORMATION:** The contents of this preamble are:

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- II. Entities Potentially Affected by This Final Rule
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  - B. Exceptions to the Compliance Date Extension
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- VI. Statutory and Executive Order Reviews

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- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132 Federalism
- F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045—Protection of Children from Environmental Health & Safety Risks
- H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act

**I. General Information**

On August 3, 2010, the Agency proposed to amend the date by which certain facilities must prepare or amend their Spill Prevention, Control, and Countermeasure (SPCC) Plans (or “Plan”), and implement those Plans (75 FR 45572). This action extends the compliance date an additional year for certain facilities, with a new compliance date of November 10, 2011, to allow time for those affected in the regulated community to understand the revisions to the SPCC rule finalized in December 2008 and November 2009 and amend or prepare and implement their SPCC Plans. However, EPA is not extending the compliance date for drilling, production or workover facilities that are offshore or that have an offshore component, or for onshore facilities required to have and submit Facility Response Plans (FRPs).

Additionally, the Agency is delaying the compliance date by which the owner or operator of a facility must address milk and milk product 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 date by which the owner or operator of a facility must comply with SPCC requirements for these milk and milk product containers is delayed one year from the effective date of a final rule specifically addressing these milk and milk product 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 delay of the compliance date provide time for certain facilities to undertake the actions necessary to prepare or amend their SPCC Plans, as well as implement them.

**II. Entities Potentially Affected by This Final Rule**

In the table below, EPA is providing a list of potentially affected entities. However, this 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

Industry sector	NAICS code
Warehousing and Storage .....	493
Religious Organizations .....	813110
Military Installations .....	928110
Pipelines .....	4861, 48691
Government .....	92

### 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, the Agency published a final rule that amended the 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 the 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, the delay of the effective date of that rule and publication of final rule amendments on November 13, 2009, the Agency is extending 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), and that the capacity of these milk containers would not be included in a facility's total oil storage capacity calculation. The Agency requested comment on an exemption for milk product containers and their associated piping and appurtenances from the SPCC rule provided they are also constructed in accordance with the current applicable 3-A Sanitary Standards, and are subject to the current applicable Grade "A" PMO sanitation requirements or a State dairy regulatory equivalent to the current applicable PMO. The Agency also requested comment on how to address milk storage containers

(including totes) that may not be constructed to 3-A Sanitary Standards under the SPCC rule and whether they should also be exempted from the SPCC requirements, provided they are subject to the current applicable Grade "A" PMO or a State dairy regulatory requirement equivalent to the current applicable PMO. Finally, the Agency also requested comment on alternative approaches to address milk and milk product containers, associated piping and appurtenances under the SPCC rule. Today's action delays the compliance date by which facilities must address milk and milk product containers, associated piping and appurtenances that may be impacted by a final rule exempting these containers.

### V. This Action

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 and implement the facility's SPCC Plan, make any necessary revisions pursuant to the 2002, 2006, 2008 and 2009 amendments to the Plan, and fully implement the amended Plan 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 the current provisions in § 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 an SPCC 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, the current provision in § 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 rule amends 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. This action extends the date by one year from the current SPCC compliance date of November 10, 2010. This extension of the compliance date does not apply, however, 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 also is concerned that extending the existing compliance date for facilities with large oil storage capacities could 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 Part 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 due to the potential to cause substantial harm, if a discharge were to occur. (Note: The Agency has not changed any compliance dates with respect to the FRP regulations.) Therefore, EPA is not extending the compliance date for drilling, production or workover facilities that are offshore or that have an offshore component, or all onshore facilities required to have and submit FRPs, due to the threats these facilities pose of significant oil spills to navigable waters or adjoining shorelines.

The Agency is also delaying the compliance date by which the owner or operator of a facility must address milk and milk product containers, associated piping and appurtenances. The delay of the compliance date affects facilities with milk and milk product containers that are constructed according to the current applicable 3-A Sanitary Standards, and subject to the current applicable Grade "A" PMO or a State dairy regulatory requirement equivalent to the current applicable PMO. The date by which a facility owner or operators must comply with SPCC requirements for these milk and milk product containers is delayed by one year from the effective date of a final rule specifically addressing these milk and milk product containers, associated piping and appurtenances, or as specified by a rule that otherwise establishes a compliance date for these facilities. The Agency will establish the compliance date and publish it in the **Federal Register** as part of any final action on the proposed exemption (74 FR 2461, January 15, 2009). The delay provides the owner or operator of these facilities the opportunity to fully understand any regulatory amendments that may be finalized.

This rule is effective immediately upon publication in the **Federal Register**. Section 553(d) of the Administrative Procedures Act requires 30 days notice before the effective date of a final rule. However, section 553(d)(1) allows an exception to the 30-day notice where a rule relieves a restriction. Because this final rule relieves a restriction, the Agency invokes section 553(d)(1) to allow an immediate effective date.

Today's rule revises the regulatory text in the proposed rule in response to the comments received. The Agency is making changes to the regulatory text in § 112.3 to clarify how the extension and the delay of the compliance date applies for different facilities.

#### *A. Extension of the Compliance Date by One Year for Certain Facilities*

This rule extends 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.<sup>3</sup> Today's rule amends and combines § 112.3(a) with §§ 112.3(b)(1) and (c) in the new paragraph § 112.3(a)(1) to:

- Amend the compliance date for a facility, including a mobile or portable facility, in operation on or before August 16, 2002 to require the owner or operator to make any necessary amendments to an SPCC Plan and fully implement the amended Plan by November 10, 2011.<sup>4</sup>

- 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, to require 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>5</sup>) which becomes operational after November 10, 2011 to require 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). Given the delay in the effective date for the December 2008 rule amendment,

<sup>3</sup> For applicability of this rule to facilities with milk and milk product containers, associated piping and appurtenances, see Section V.D in this preamble.

<sup>4</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.

<sup>5</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>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.

and the uncertainty that surrounded the final amendments because of this delay, this extension allows 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 timeframe for this extension of one year is appropriate. A one-year period from the current compliance date provides sufficient time to understand and implement the amendments to the SPCC rule.

#### *B. Exceptions to the Compliance Date Extension*

The Agency is not extending the compliance date for drilling, production or 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 navigable waters 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. Based on the recent experience with the 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 navigable waters or adjoining shorelines (40 CFR Part 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 may have their tank batteries located onshore, their wellhead and portions of the flowlines 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 any extension to the compliance date. The Agency is also excluding 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). 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.

Today's rule adds a new paragraph § 112.3(a)(2) to maintain the existing compliance date for this subset of facilities, and combines it with the § 112.3(c) provision to indicate that the existing compliance date also applies to mobile or portable facilities within this subset:

- Maintains the existing compliance date for A drilling, production or workover facility, that is offshore or that has an offshore component; or 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.
- Maintains the existing compliance date for a drilling, production or 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 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.
- Maintains the existing compliance date for a facility (except an oil production facility<sup>6</sup>) that is either: A drilling, production or 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

<sup>6</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.

owner or operator to prepare and implement an SPCC Plan before beginning operations.

- Incorporates language under the current § 112.3(c) provision 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.

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

The Agency is amending § 112.3(b)(2) to distinguish the two separate compliance dates that would apply to oil production facilities that become operational after the compliance dates. The Agency is also moving this provision to § 112.3(b). The new § 112.3(b) amendments:

- Maintain the existing compliance date for any oil production facility that is offshore or that has an offshore component, or any onshore oil production facility required to have and 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 any onshore oil production facility (*i.e.*, one that does not have an offshore component and is not required to have and 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.

#### *D. Delay of Compliance Date for Facilities Affecting Milk and Milk Product Containers, Associated Piping and Appurtenances*

The Agency is delaying the compliance date by which the owner or operator of a facility must address milk and milk product 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" 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 containers from the SPCC requirements (74 FR 2461, January 15, 2009). The date

by which a facility owner or operator must comply with SPCC requirements for these milk and milk product containers is delayed by one year from the effective date of a final rule specifically addressing these milk and milk product containers, associated piping and appurtenances, or as specified by a rule that otherwise establishes a new compliance date for these facilities. The Agency will 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 provides the owner or operator the opportunity to fully understand any new regulatory amendments for milk and milk product containers, associated piping and appurtenances. Today's rule amends § 112.3(c) to:

- Delay the compliance date by which the owner or operator of a facility must address milk and milk product 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" PMO or a State dairy regulatory requirement equivalent to the current applicable PMO:
  - During the delay, the owner or operator of the facility does not include milk and milk product containers as described above when either determining the aggregate facility oil storage capacity or as part of the facility's SPCC Plan.
- Require that all other oil storage containers at the facility (excluding milk and milk product containers as described above) be addressed in the SPCC Plan by November 10, 2011 when the facility has an aboveground oil storage capacity (excluding the capacity of these milk and milk product containers) greater than 1,320 U.S. gallons or a completely buried storage capacity greater than 42,000 U.S. gallons. A facility that has milk and milk product containers, associated piping and appurtenances as described above, that:
  - Began operating before the August 16, 2002 effective date of the July 2002 SPCC rule amendments (67 FR 47042) will have to maintain the existing SPCC Plan for any other oil container at the facility, and *amend* it to ensure compliance with the SPCC rule requirements to address these other oil containers otherwise subject to the SPCC requirements by November 10, 2011;
  - Began operating after August 16, 2002, but before November 10,

2011, will have to *prepare* and implement an SPCC Plan for the facility to address any other oil containers at the facility otherwise subject to the SPCC requirements by November 10, 2011; and

- Begins operating after November 10, 2011 will have to prepare and implement a Plan before starting operations to address any other oil containers at the facility otherwise subject to the SPCC requirements.

#### E. Summary of Comments and Response

The Agency solicited comments on the proposed compliance date extension by which owners and operators would be required to prepare, amend, and implement SPCC Plans in accordance with the amendments to the SPCC rule. The Agency also discussed an alternative of a shorter compliance date extension, such as either six or nine months (either May 10, 2011 or August 10, 2011).

In addition, the Agency solicited comments on the proposed exceptions to the compliance date extension: Requiring drilling, production or workover facilities that are offshore or that have an offshore component, or onshore facilities that are required to have and submit an FRP, to comply by the current compliance date of November 10, 2010.

Furthermore, the Agency also solicited comments 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.

The Agency received 34 comments on the proposed rule. The discussion below summarizes and responds to the major comments received. A more complete response to comments can be found in the docket for this rulemaking, EPA-HQ-OPA-2009-0880.

#### Comments

*Comments that support an extension of the compliance date.* The majority of comments supported the Agency's proposal to extend the compliance dates in Sec. 112.3 for certain facilities. They agreed with the Agency that an extension of the compliance date was necessary to allow owners and operators sufficient time to amend and implement their SPCC Plans. Of those that supported an extension of the compliance dates, some comments agreed with extending the compliance dates as proposed. Other comments supported an extension, but did not agree with the length of the extension

proposed by the Agency, arguing for additional time. These requests cited the extent of modifications necessary at facilities; the need to obtain the services of Professional Engineers (PE); the time for EPA and other stakeholders to conduct outreach; the need for EPA to complete further regulatory clarifications on the definition of oil; finalize clarification on jurisdictional issues between EPA and the Department of Transportation (DOT); and revise the *SPCC Guidance for Regional Inspectors* to help stakeholders better understand the regulatory requirements and the December 2008 and November 2009 amendments. Some comments indicated that the alternative approach to consider a shorter compliance date extension, such as either six or nine months, would not be appropriate.

*Comment relating to eligibility of the compliance date.* One comment raised concerns with a footnote in the preamble of the proposed rule that stated, "[t]o 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."

*Comments pertaining to the exceptions to the compliance date extension.* Several comments supported or took no position on the exception to the compliance date for drilling, production or workover facilities that are offshore or that have an offshore component, or onshore facilities required to have and submit FRPs. One comment, however, opposed the exception for onshore facilities required to have and submit FRPs, arguing that these facilities have always been included in compliance date extensions in the past, and that this time should be no exception. The comment further indicated that FRP-regulated facilities have EPA-approved FRPs that are in place to address the Agency's concern that these facilities have the potential to cause substantial harm if a discharge were to occur. Finally, FRP facilities are large and complex operations that require additional time to come into compliance and therefore these facilities should be eligible for the one-year extension.

*Comments that support a delay of the compliance date for facilities with milk containers that meet specific requirements.* Several comments expressed support for delaying the compliance date for facilities with milk containers, associated piping and appurtenances until one year after EPA finalizes a rule for these facilities. Two comments requested that EPA clarify that the extension and future exemption will apply to milk and milk products,

including but not limited to such products as cheese, cream, yogurt and ice cream mix. A number of comments indicated that the two different compliance deadlines for dairy facilities based on their start date are unnecessarily confusing and complex. The comments specifically cited confusion with how the compliance date applies based on when a facility begins operating and whether they must maintain and amend an SPCC Plan or prepare a new SPCC Plan. The organizations requested that EPA extend the compliance date to one year after finalization of the bulk milk storage exemption to all facilities, regardless of start date. Additionally, comments requested clarification on how the compliance date applies to facilities with both petroleum and bulk milk storage. Comments also requested that EPA take final action on the proposal to exempt milk storage containers, associated piping, and appurtenances from the SPCC rule.

#### Response to Comments

*Response to comments that support an extension of the compliance date.* EPA agrees with the comments that an extension of the compliance date for certain facilities is necessary because it provides the owner or operator of a facility the opportunity to fully understand the regulatory amendments offered by the revisions to the SPCC rule promulgated on December 5, 2008 (73 FR 74236) and November 13, 2009 (74 FR 58784). Furthermore, this extension will allow the regulated community time to understand all of the regulatory amendments offered by revisions to the SPCC rule promulgated since July 2002. Therefore, the Agency is promulgating a one-year extension of the compliance dates for certain facilities, but is excluding from the extension drilling, production and workover facilities that are offshore or that have an offshore component, or onshore facilities that are required to have and submit an FRP. EPA believes that a one-year extension of the compliance dates to November 10, 2011 is appropriate for certain facilities for a number of reasons, particularly since the owners and operators of SPCC-regulated facilities have had at least a year to understand the final SPCC amendments.

The SPCC compliance dates have been delayed since the promulgation of amendments in July 2002; during this time, new facilities (those that have become operational after the effective date of the July 2002 amendments) have not yet been required to prepare and implement an SPCC Plan. Therefore, EPA believes that any compliance date

beyond the extension finalized in this action would be inappropriate and not environmentally protective.

Facilities in operation prior to the effective date of the July 2002 amendments are required to maintain their SPCC Plans and have had ample time to schedule and conduct facility modifications (as necessary) to comply with these amendments. Additionally, because the SPCC amendments published in December 2008 and November 2009 primarily streamlined the rule requirements, facilities should not require extensive modifications in order to comply with these regulatory amendments.

Since promulgating the July 2002 amendments to the SPCC rule, the Agency has and will continue to provide outreach and compliance assistance to SPCC regulated facilities so that a compliance extension for certain facilities to November 10, 2011 should be sufficient. The Agency does not believe ongoing outreach activities; updates to existing guidance documents; further regulatory clarifications; or development of new guidance or jurisdictional clarifications between EPA and other federal agencies are a basis for further extending the compliance date. EPA intends to continue to conduct outreach and provide guidance and clarification on the SPCC requirements (as appropriate), but does not believe that facilities should wait to amend or prepare and implement their SPCC Plans because these are ongoing activities.

EPA also does not agree that the extension or additional time for compliance should be provided to revise the *SPCC Guidance for Regional Inspectors*. While EPA plans to revise the guidance document, most of the modifications to the SPCC regulation are already explained and discussed in the preamble to the final rules. Thus, there are very few necessary revisions to the guidance to address any new regulatory burden, as the past several actions on the SPCC rule were for the purposes of regulatory streamlining.<sup>7</sup> EPA did not

<sup>7</sup> EPA intends to issue revisions to the SPCC Guidance for Regional Inspectors that address changes made to the SPCC rule, consistent with the December 2006, December 2008, and November 2009 regulatory amendments (71 FR 77266, December 26, 2006; 73 FR 74236, December 5, 2008; 74 FR 58784, November 13, 2009). The guidance document is designed to provide more detail about the rule's applicability, to clarify the role of the inspector in the review and evaluation of a facility owner or operator's compliance with the performance-based SPCC requirements, and to provide a consistent national policy on several SPCC-related issues. EPA welcomes comments from the regulated community and the public on the guidance document at any time. Instructions for submitting comments are provided on the EPA

propose an extension to the compliance date with a rationale based on completion of the guidance for the reasons stated above.

The Agency did not receive any comments supporting a shorter extension to the compliance date, and thus, has decided not to promulgate an amended compliance date for certain facilities to either of the alternative shorter time periods offered for comment (either May 10, 2011 or August 10, 2011). The Agency recognizes that the owner or operator of a regulated facility needs adequate time to comply with the SPCC rule following amendments to the regulation. EPA recognizes that any timeframe shorter than one year from the current compliance date may not allow sufficient time for those facilities for which EPA is granting a compliance date extension to fully understand and comply with all of the recently promulgated SPCC amendments or hire Professional Engineers. A one year timeframe also accommodates seasonal considerations for various industries. Therefore, the Agency is promulgating a one-year compliance date extension to allow certain facilities time to prepare, amend, and implement an SPCC Plan following recent amendments to the SPCC rule.

*Response to the comment relating to eligibility of the compliance date.* EPA does not agree with the comment that suggests that footnote #3 in the proposed rule that clarifies how the compliance date extension applies to facilities in operation prior to August 16, 2002 is incorrect. EPA established initial compliance dates in the July 2002 final rule (67 FR 47042) and clarified in the preamble how the compliance dates apply to facilities in operation prior to the effective date of the rule (*see* 67 FR 47082, July 17, 2002). The examples provided in the July 2002 preamble were consistent with and illustrated the accompanying regulatory text that established the initial compliance dates. The Agency has indicated in each **Federal Register** notice announcing the subsequent extension to the compliance dates<sup>8</sup> that facilities in operation prior to August 16, 2002 must maintain an SPCC Plan. If a facility has no SPCC Plan to maintain, then the date by which the facility has to amend the Plan

Office of Emergency Management Web site at <http://www.epa.gov/emergencies>.

<sup>8</sup> 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).

to comply with the SPCC regulatory revisions promulgated since 2002 does not apply and the owner or operator is not eligible for the extension. The footnote discussed here is wholly consistent with the Agency's preamble examples in the July 2002 final rule and the regulatory text extending compliance dates since 2002.

*Response to the comments pertaining to the exceptions to the compliance date extension.* EPA does not agree that onshore facilities that are required to have and submit FRPs should be eligible for the one year extension. The Agency is concerned with the threat for immediate environmental impacts resulting from oil spills from these facilities 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). The comment correctly indicates that many of these facilities are implementing FRPs that are approved by the Agency; however, these plans serve to identify response capability in the event of a discharge to navigable waters or adjoining shorelines and do not specifically include requirements that serve to prevent these discharges. For example, implementation of a tank integrity testing program and brittle fracture evaluations are SPCC requirements and not FRP requirements. Many of the SPCC requirements promulgated since July 2002 serve to enhance prevention of oil spills and EPA does not believe it is environmentally protective to extend the date by which these requirements are addressed and implemented at FRP-regulated facilities.

The Agency recognizes that some facilities excluded from the extension of the compliance date (*i.e.*, drilling, production or workover facilities that are offshore or that have an offshore component, or an onshore facility that is required to have and submit an FRP) may require additional time to amend or prepare their SPCC Plans as a result of either non-availability of qualified personnel, or delays in construction or equipment delivery beyond the control and without the fault of the owner or operator. If so, the owner or operator of the facility may submit a written request for additional time to amend or prepare an SPCC Plan to the Regional Administrator in accordance with § 112.3(f).

*Response to comments that support a delay of the compliance date for facilities with milk containers that meet specific requirements.* EPA agrees with comments that supported a delay of the compliance date by which facilities

must address 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" PMO or a State dairy regulatory requirement equivalent to the current applicable PMO. The Agency is moving forward to take final action on the proposed rulemaking that addresses those milk containers as expeditiously as possible. Additionally, the Agency is considering whether to exempt milk product containers, piping and appurtenances that are subject to the same 3-A Sanitary Standards and Grade "A" PMO specified for milk containers, associated piping and appurtenances. Therefore, the Agency is clarifying that the delay applies to both milk and milk product containers, associated piping and appurtenances constructed according to the current applicable 3-A Sanitary Standards, and subject to the current applicable Grade "A" PMO or a State dairy regulatory requirement equivalent to the current applicable PMO. The compliance date delay by which the owner or operator of a facility must address milk and milk product containers described above will provide time to complete this action.

EPA agrees that a single date by which the owners or operators of facilities must address milk and milk product 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" PMO or a State dairy regulatory requirement equivalent to the current applicable PMO in the facility's SPCC Plan, would offer clarity. A date will be established in a FR notice in the future and will be one year from the effective date of a final rule addressing the SPCC requirements specifically for these milk and milk product containers, associated piping and appurtenances, or as specified by a rule that otherwise establishes a compliance date for these facilities. During the delay, the owner or operator of the facility excludes milk and milk product 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" PMO or a State dairy regulatory requirement equivalent to the current applicable PMO from the facility's aggregate oil storage capacity calculations, and does not include these containers in the SPCC Plan.

However, when there are other oil storage containers (such as petroleum containers) at a facility that has milk and milk product containers, associated

piping and appurtenances as described above and the facility meets the aggregate oil storage capacity thresholds of § 112.1<sup>9</sup> (excluding the capacity of the milk and milk product containers) then the owner or operator of the facility must maintain and amend, or prepare an SPCC Plan to address these other oil containers at the facility in accordance with § 112.3(a)(1) by November 10, 2011.

## 6. 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 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.

## VI. 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

<sup>9</sup> The facility has an aboveground oil storage capacity greater than 1,320 U.S. gallons or the completely buried storage capacity is greater than 42,000 U.S. gallons.



documented in the docket for this action.

#### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* This 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 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 rule on small entities, I certify that this 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 rule extends the compliance date in § 112.3(a)(1) for most facilities by one year and delays the compliance date in § 112.3(c) by which facilities must address milk and milk product containers, associated piping and appurtenances that meet certain conditions by 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 that streamlined and tailored the regulatory requirements. By simply extending the compliance date for most facilities, today's rule will defer the regulatory burden for all affected entities.

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

This 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 rule simply extends the compliance date for most facilities subject to the rule.

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

This 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 rule does not preempt State law or regulations. Thus, Executive Order 13132 does not apply to this rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The rule does 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 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 action present a disproportionate risk to children.

#### *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 defer 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"), Public Law 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 final rulemaking involves technical standards. EPA proposes to use the 3-A Sanitary Standards, "Storage Tanks for Milk and Milk Products", 3A 01-08, November 2001, developed by 3-A Sanitary Standards, Inc. A copy of these standards may be

obtained from the 3-A Sanitary Standards online store at <http://www.techstreet.com/3Agate.html>; by contacting the organization at 6888 Elm Street, Suite 2D, McLean, Virginia 22101; by phone at (703) 790-0295; or by facsimile at (703) 761-6284. EPA is finalizing a delay of the compliance date to the SPCC rule, by which the owner or operator of a facility that is subject to the SPCC requirements, must address milk and milk product storage containers and associated piping and appurtenances constructed in accordance with 3-A Sanitary Standards, and subject to the current applicable Grade "A" PMO or a State dairy regulatory requirement equivalent to the current applicable PMO.

*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 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.

*K. 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 will submit 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. 804(2) and will be effective on October 14, 2010.

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

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

Dated: October 7, 2010.

**Lisa P. Jackson**,  
Administrator.

■ For the reasons set forth in the preamble, title 40, chapter I, of the Code of Federal Regulations is 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)(1) Except as otherwise provided in this section, 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.

(2) 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.

(b) If your oil production facility as described in paragraph (a)(1) of this section becomes operational after November 10, 2011, or as described in paragraph (a)(2) 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.

(c) If your facility has milk and milk product 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, do not include these milk and milk product containers when either determining the aggregate oil storage capacity of your facility or as part of your Plan. The date in paragraph (a)(1), by which you must comply with the provisions of this part for these milk and milk product containers, is delayed by one year from the effective date of a final rule addressing these milk and milk product containers, or until a rule that otherwise establishes a compliance date. You must maintain and amend, or prepare your Plan to address any other oil containers at the facility otherwise subject to the requirements of this part by the compliance date in paragraph (a)(1) of this section if your facility

meets any of the aggregate oil storage capacity thresholds of § 112.1 of this part.

\* \* \* \* \*

[FR Doc. 2010-25899 Filed 10-13-10; 8:45 am]

BILLING CODE 6560-50-P

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Parts 301-10, 301-11, 301-50, 301-73, and Appendix D to Chapter 301

[FTR Amendment 2010-05; FTR Case 2010-306; Docket Number 2010-0018, Sequence 1]

RIN 3090-AJ08

### Federal Travel Regulation (FTR); Lodging and Transportation Amendment

**AGENCY:** Office of Governmentwide Policy, General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is amending the Federal Travel Regulation (FTR) by revising and updating its policy on lodging and transportation. This final rule also updates an acronym and references to such in the FTR.

**DATES:** *Effective Date:* This final rule is effective November 15, 2010.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Secretariat (MVCB), Room 4041, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cheryl D. McClain, Office of Governmentwide Policy (OGP), at (202) 208-4334 or e-mail at [cheryl.mcclain@gsa.gov](mailto:cheryl.mcclain@gsa.gov). Please cite FTR Amendment 2010-05; FTR case 2010-306.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

GSA's Office of Governmentwide Policy (OGP) is updating the Federal Travel Regulation (FTR) by removing section 301-50.8. Section 301-50.8 contains language regarding limitations on travel arrangements for common carriers, commercial lodging, and car rental usage. Consequently, parts 301-10 and 301-11 will be revised to include the language pertaining to common carriers, commercial lodging and car rental accommodations. Specifically, OGP is revising section 301-10.105 regarding the basic requirements for using common carrier

transportation and revising section 301-10.450 to provide guidance to travelers regarding renting vehicles under the Defense Travel Management Office's (DTMO) U.S. Government Car Rental Agreement. Also, section 301-11.11 is being revised to provide guidance to travelers who choose to obtain commercial lodging under a Government lodging agreement.

This final rule also updates references in section 301-73.106 and Appendix D to Chapter 301 to change "Surface Deployment Distribution Command" (SDDC) to "Defense Travel Management Office" (DTMO).

##### B. Executive Order 12866

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

##### C. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions are not considered substantive. This final rule is also exempt from the Regulatory Flexibility Act per 5 U.S.C. 553(a)(2) because it applies to agency management or personnel. However, this final rule is being published to provide transparency in the promulgation of Federal policies.

##### D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

##### E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates to agency management and personnel.

#### List of Subjects in 41 CFR Parts 301-10, 301-11, 301-50, 301-73, and Appendix D to Chapter 301

Government employees, Lodging and transportation programs.

Dated: August 25, 2010.

**Martha Johnson,**

*Administrator of General Services.*

For the reasons set forth in the preamble, under 5 U.S.C. 5701-5709,

GSA amends 41 CFR parts 301-10, 301-11, 301-50, 301-73, and Appendix D of Chapter 301 as set forth below:

### PART 301-10—TRANSPORTATION EXPENSES

■ 1. The authority citation for 41 CFR part 301-10 continues to read as follows:

**Authority:** 5 U.S.C. 5707, 40 U.S.C. 121(c), 49 U.S.C. 40118, OMB Circular No. A-126, revised May 22, 1992.

■ 2. Remove the undesignated center heading "Airline" that appears immediately before § 301-10.105.

■ 3. Revise § 301-10.105 to read as follows:

#### § 301-10.105 What are the basic requirements for using common carrier transportation?

The basic requirements for using common carrier transportation fall into three categories:

(a) Using contract carriers, when available, and if your agency is a mandatory user of GSA's city-pair contracts for air passenger transportation services, unless you have an approved exception (*see* §§ 301-10.106 through 301-10.108 of this subpart);

(b) Using coach-class service, unless other than coach-class service is authorized under § 301-10.123 or § 301-10.162, and when travelling by ship, using lowest first-class accommodations, unless other than lowest first-class accommodations are authorized under § 301-10.183 of this subpart; and

(c) You must always use U.S. Flag Air Carrier (or ship) service for air passenger transportation or when travelling by ship, unless your travel circumstances meet one of the exceptions in §§ 301-10.135 through 301-10.138 or § 301-10.183 of this subpart.

■ 4. Amend § 301-10.450 by revising the section heading, designating the existing paragraph as paragraph (a), and adding paragraph (b) to read as follows:

#### § 301-10.450 When and from whom may I rent a vehicle for official travel when authorized?

\* \* \* \* \*

(b) When authorized to use a rental vehicle, you should consider renting a vehicle from a vendor that participates in the Defense Travel Management Office (DTMO) U.S. Government Car Rental Agreement to avail yourself of the Agreement's benefits, including the insurance and damage liability provisions, unless you are OCONUS and no agreement is in place for your TDY