

excluded, under figure 2–1, paragraph (34)(g) of the Instruction because it involves the establishment of a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add new temporary § 165.T09–0477 as follows:

**§ 165.T09–0477 Safety Zone; Sigma Gamma Fireworks; Lake St. Clair; Grosse Pointe Farms, MI.**

(a) *Location.* The following area is a temporary safety zone: all U.S. waters of Lake St. Clair, off Ford’s Cove, within a 300-yard radius of the fireworks launch site located at position 42°27’ N, 082°52’ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective Period.* This regulation is effective and will be enforced from 9 p.m. until 10 p.m. on June 22, 2009.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The “on-scene representative” of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: June 3, 2009.

**F.M. Midgette,**

*Captain, U.S. Coast Guard, Captain of the Port Detroit.*

[FR Doc. E9–14389 Filed 6–18–09; 8:45 am]

**BILLING CODE 4910–15–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 112**

[EPA–HQ–OPA–2008–0546; FRL–8919–9]

**RIN 2050–AG49**

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

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is amending the dates by which facilities must prepare or amend their Spill Prevention, Control, and Countermeasure (SPCC) Plans, and implement those Plans to November 10, 2010. The Agency is also establishing November 10, 2010 as the date for farms to prepare or amend their Spill Prevention, Control, and Countermeasure Plans (SPCC Plans), and implement those Plans.

**DATES:** This final rule is effective June 19, 2009.

**ADDRESSES:** The public docket for this rulemaking, Docket ID No. EPA–HQ–OPA–2008–0546, contains the information related to this rulemaking, including the response to comment document. All documents in the docket are listed in index at the <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, 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](mailto:principe.vanessa@epa.gov)) or Mark W. Howard at (202) 564–1964 ([howard.markw@epa.gov](mailto:howard.markw@epa.gov)), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, Mail Code 5104A.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*Does This Action Apply to Me?*

Industry sector	NAICS code
Oil Production .....	21111
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

Industry sector	NAICS code
Retail Trade .....	441–446, 448, 451–454
Contract Construction .....	23
Wholesale Trade .....	42
Other Commercial .....	492, 541, 551, 561–562
Transportation .....	481–488
Arts Entertainment & Recreation .....	711–713
Other Services (Except Public Administration) .....	811–813
Petroleum Bulk Stations and Terminals .....	4247
Education .....	61
Hospitals & Other Health Care .....	621, 622
Accommodation and Food Services .....	721, 722
Fuel Oil Dealers .....	45431
Gasoline stations .....	4471
Information Finance and Insurance .....	51, 52
Mining .....	212
Warehousing and Storage .....	493
Religious Organizations .....	813110
Military Installations .....	928110
Pipelines .....	4861, 48691
Government .....	92

The list of potentially affected entities in the above table may not be exhaustive. The Agency's goal is to provide a guide for readers to consider regarding entities that potentially could be affected by this action. However, this final rule may affect other entities not listed in this table. 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**.

## II. Authority

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

## III. Background

On July 17, 2002, the Agency published a final rule that amended the Spill Prevention, Control, and Countermeasure (SPCC) regulations (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. Since that time, the compliance dates were amended 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), and on May 16, 2007 (72 FR 27444).

On December 26, 2006, EPA finalized a set of SPCC amendments that address certain targeted areas of the SPCC requirements, based on issues and concerns raised by the regulated community (71 FR 77266). In addition, while EPA worked to determine if the agriculture sector warranted specific consideration under the SPCC rule, it extended the compliance dates for preparing, or amending and implementing SPCC Plans for farms

subject to SPCC (71 FR 77266, December 26, 2006). Under the provisions in § 112.3(a) and (b), the compliance dates for farms were extended until the effective date of a rule that establishes the SPCC requirements specifically for this sector or that otherwise establishes dates by which farms must comply with the provisions of this part. This final rule establishes such dates.

On December 5, 2008 (73 FR 74236), EPA amended the SPCC rule to provide increased clarity, tailor requirements to particular industry sectors (including farms), and streamline certain requirements for a facility owner or operator subject to the rule. The effective date of the December 2008 rulemaking was delayed until April 4, 2009, 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) (74 FR 5900, February 3, 2009). The Agency took this action to ensure that the rule properly reflects consideration of all relevant facts. EPA requested public comment on the delay of the effective date and its duration, and on the regulatory amendments contained in the final rule. EPA received numerous comments on these regulatory amendments. Many comments offered recommendations related to specific amendments, such as the optional approaches for produced water containers and the criteria for qualified oil production facilities. Many other amendments received no comment or received support and ultimately may not change. Consistent with the January 21, 2009 OMB

memorandum "Implementation of Memorandum Concerning Regulatory Review," the EPA Administrator has chosen the December 2008 rule for additional assessment; therefore, EPA must carefully consider the issues raised in these comments. Because EPA could not adequately address the comments before the April 4, 2009 effective date, it has again delayed the effective date of the final rule to allow sufficient time to review and address these comments. The December 2008 SPCC amendments will become effective on January 14, 2010 (74 FR 14736, April 1, 2009).

On November 26, 2008 (73 FR 72016), EPA proposed to amend the dates by which facilities must prepare or amend their SPCC Plans, and implement those Plans, and proposed to establish dates for farms to prepare or amend their SPCC Plans, and implement those Plans. Different dates were proposed for farms and oil production facilities that meet the qualified facilities criteria in § 112.3(g). Although the Agency finalized a compliance date extension in January 2009, that action was never published in the **Federal Register**. This notice finalizes the November 2008 proposal to extend the compliance dates in § 112.3. This compliance date extension was intended to provide the owner or operator of a facility the opportunity to fully understand the regulatory amendments offered by all of the amendments to the SPCC rule since July 2002.

## IV. Summary of This Final Rule

This final rule amends the dates in § 112.3(a), (b) and (c) by which facilities, including farms, must prepare or amend their SPCC Plans, and implement those Plans. The revision also includes a technical correction in § 112.3(a)(1) to

address a misspelling of the word "must." Under the amended § 112.3(a), the owner or operator of a facility that was in operation on or before August 16, 2002, must maintain his SPCC Plan, make any necessary amendments to the Plan and fully implement it by November 10, 2010, while the owner or operator of a facility that came into operation after August 16, 2002, but before November 10, 2010, is required to prepare and implement an SPCC Plan on or before November 10, 2010.

Under the amended § 112.3(b)(1), the owner or operator of an onshore or offshore facility that becomes operational after November 10, 2010, and could reasonably be expected to have a discharge as described in § 112.1(b), must prepare and implement a Plan before beginning operations. The Agency is establishing the same compliance dates for farms as for all other facilities and thus, this rule amends the paragraphs in § 112.3 specific to farms (§ 112.3(a)(2) and (b)(2)) to include the November 10, 2010 compliance date. Additionally, the rule text in § 112.3(a)(2) and (b)(2) is revised to remove reference to "onshore facility" because this text is unnecessary. For simplicity, the rule text now references "a farm as defined in § 112.2."

Under amended § 112.3(c), an owner or operator of a mobile facility is required to maintain his SPCC Plan, but must make any necessary amendments and implement it on or before November 10, 2010. The owner or operator of an onshore or offshore mobile facility that becomes operational after November 10, 2010, and could reasonably be expected to have a discharge as described in § 112.1(b), must prepare and implement an SPCC Plan before beginning operations.

The Agency believes that an extension of the compliance date is appropriate because it provides the owner or operator of a facility the opportunity to fully understand all of the regulatory amendments offered by revisions to the SPCC rule promulgated since July 2002.<sup>1</sup> This extension will allow the regulated community approximately 16 months beyond the previous compliance date of July 1, 2009 to make changes to their facilities and to their SPCC Plans necessary to comply with the revised SPCC requirements. Furthermore, because EPA has not yet decided how to proceed on the

December 2008 rule amendments, the Agency believes that this compliance date extension provides sufficient time for the Agency to review those comments and to promulgate any additional revisions that result from this review. The Agency expects to promulgate final revisions to the December 5, 2008 amendments, if any, in November of 2009 and is therefore choosing a compliance date that is approximately one year from the expected publication date of those revisions.

The Agency also believes the compliance date for farms established in this notice is warranted for several reasons. The original compliance date extension for farms (71 FR 77266, December 26, 2006) allowed the Agency to conduct additional information collection and analyses to determine if differentiated SPCC requirements may be appropriate for farms. The Agency worked with the U.S. Department of Agriculture (USDA) to collect data to more accurately characterize oil handling at these facilities, thus allowing the Agency to better tailor and streamline the SPCC requirements to address the concerns of the farming sector; on December 5, 2008 (73 FR 74236), EPA promulgated a final set of SPCC amendments that targeted certain SPCC requirements particularly relevant to farms. Given the delay in the effective date for the December 2008 amendments, the compliance date amendment provides facilities the necessary time to fully understand the regulatory amendments, including the July 2002 and December 2006 SPCC amendments, in addition to those finalized on December 5, 2008. The final compliance date allows this sector sufficient time to make changes to their facilities and to their SPCC Plans necessary to comply with the revised requirements.

The Agency believes that a single compliance date for all regulated facilities avoids potential confusion by an owner or operator when determining the date for compliance at his facility. In providing a single compliance date applicable to all sectors, EPA believes that facility owners and operators will have additional clarity which will result in increased compliance with the SPCC rule. However, 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 will 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.

It should be noted that these compliance date amendments affect only requirements of the July 2002 and December 2006 SPCC rule amendments (July 17, 2002, 67 FR 47042; and December 26, 2006, 71 FR 77266) that impose new or more stringent compliance obligations than did the 1973 SPCC rule. Provisions in these amendments that provide regulatory relief are not affected by these compliance date amendments because they would not require amendments to existing Plans "to ensure compliance" (see § 112.3). Provisions in these amendments that provide regulatory relief to facilities are applicable as of the effective date of the amendment. Once the December 2008 rule (December 5, 2008, 73 FR 74236) becomes effective, the regulatory relief applies immediately but the facility owner or operator must amend the SPCC Plan to include more stringent provisions by the compliance date. This issue was discussed by the Agency in two previous extension notices on April 17, 2003 (68 FR 18890, at 18892-18893), and on August 11, 2004 (69 FR 48794, at 48796).

This rule is effective immediately. 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.

## V. Response to Comment

The Agency received approximately 25 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-2008-0546.

*Comments.* The majority of comments supported the Agency's proposal to extend the compliance dates in § 112.3. They agreed with the Agency that the extension 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. These requests cited the extent of

<sup>1</sup> As stated in the rule, a facility owner or operator must maintain its existing SPCC Plan. A facility owner or operator who wants to take advantage of the July 2002 and December 2006 regulatory changes may do so, but will need to modify the existing SPCC Plan accordingly.

modifications necessary at facilities, the need to obtain the services of Professional Engineers (PE), and the need for EPA to revise the *SPCC Guidance for Regional Inspectors* to help stakeholders better understand the regulations and the December 2006 and December 2008 regulatory amendments.

Specifically, a number of comments requested that the Agency extend the compliance date to December 5, 2009. These comments argued that, because the official promulgation of the rule occurred with its publication in the **Federal Register** on December 5, 2008, the one-year compliance period should be calculated from that date.

A subset of comments also requested that the Agency reinstate a six-month interim period between the compliance dates for Plan amendment and implementation. Those comments requested that the date for implementing amended SPCC Plans be revised to include a six-month period after the date for Plan amendment. Thus, if the Agency extended the compliance date for one year for Plan amendment, comments suggested that the Agency provide an additional 6 months to actually implement the Plan, for a total of 18 months.

Some comments requested that the compliance date for oil production facilities that do not meet the qualified facilities criteria in § 112.3(g) be extended to December 5, 2010, to allow an additional year for two full years from publication of the final rule amendments in the **Federal Register**. These comments indicated that the November 20, 2009 date provides insufficient time to comply with the rule.

Other comments objected to the Agency's proposal of different compliance dates for qualified farms and qualified oil production facilities. Comments requested that the compliance dates for all farms and oil production facilities, whether they meet the qualified facilities criteria in § 112.3(g) or not, be extended to November 20, 2013. Those comments stated that assigning differentiated compliance dates to different industries was unnecessary and that additional time was necessary to conduct outreach and compliance assistance to the regulated community. Some comments also stated that assigning differentiated compliance dates to qualified facilities and all other facilities within one industry caused confusion over the applicability of the rule.

*Response to comment.* EPA agrees with comments that an extension of the compliance dates is necessary because it provides the owner or operator of a

facility the opportunity to fully understand the regulatory amendments offered by revisions to the SPCC rule promulgated on December 5, 2008 (73 FR 74236). The Agency expects to promulgate final revisions to the December 5, 2008 amendments, if any, in November of 2009 and is therefore choosing a compliance date that is approximately one year from the expected publication date of those revisions. This will allow the regulated community time to fully understand all of the regulatory amendments offered by revisions to the SPCC rule promulgated since July 2002.

The Agency proposed a two-year and a five-year extension of the compliance dates for farms and oil production facilities, respectively, that meet the qualified facilities criteria in § 112.3(g). This was intended to allow additional time for EPA to partner with Federal and state agencies and industry stakeholders to conduct outreach and compliance assistance to these facilities. However, after reviewing comments and further considering the amendments that were recently promulgated in December 2008, EPA believes that an extension of the compliance dates to November 10, 2010 is appropriate for all facilities for a number of reasons.

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 2006 and December 2008 were intended to streamline rule requirements, facilities should not require extensive modifications in order to comply with these regulatory amendments.

Since promulgating the 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 to November 10, 2010 should be sufficient. The Agency does not believe that ongoing outreach activities or updates to

guidance are a basis for further extending the compliance date.

Finally, EPA provided an option to allow owners and operators of eligible facilities to self-certify their SPCC Plans in December 2006, thereby minimizing reliance on PEs to certify SPCC Plans. This should greatly reduce the scheduling problems associated with obtaining a PE to certify a facility's SPCC Plan amendments.

It should also be noted that 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). The Regional Administrator may authorize an extension of time for the owner or operator to prepare or amend and implement an SPCC Plan for the facility, when he 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.

The Agency disagrees with those comments that suggest the compliance dates be amended to exactly correspond with the publication date of the final rule amendments in the **Federal Register** on December 5, 2008. Because EPA has delayed the effective date of the December 2008 rule amendments until January 14, 2010, the Agency believes that it will cause less confusion among the regulated community to extend the compliance date by one year beyond the approximate date when revisions, if any, to the December 2008 amendments are promulgated.<sup>2</sup>

The Agency also disagrees with comments that requested that EPA incorporate a six-month period between the SPCC Plan preparation/amendment date and the SPCC Plan implementation date. In February 2006, the Agency eliminated the gap between SPCC Plan preparation/amendment and implementation to allow the owner or operator of a facility additional time to prepare or amend the SPCC Plan (71 FR 8462, February 17, 2006). The Agency still believes that this approach provides added flexibility, given that owners and operators of regulated-facilities are not required to submit their SPCC Plans to the Agency at the time of Plan preparation or amendment.

The Agency agrees, however, with comments that argued that the

<sup>2</sup> Based on the Congressional Review Act which requires that the Agency allow 60 days after promulgation of a major rule before it goes into effect, the Agency will need to promulgate any amendments to the December 2008 rule by November 2009.

compliance dates should be extended beyond the proposed November 20, 2009 date. 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. Therefore, the Agency has extended the compliance date to allow facilities time to prepare, amend, and implement an SPCC Plan following final Agency action on the SPCC rule. The Agency is working to promulgate any amendments to the December 2008 rule by November 2009.

The Agency also believes that this action is appropriate because it will provide the owner or operator of all facilities the opportunity to fully understand the regulatory amendments offered by revisions to the SPCC rule promulgated on December 5, 2008 (73 FR 74236). EPA has not yet decided what changes, if any, to make to the December 2008 amendments. However, the Agency believes that a full year from the approximate date of promulgation of any revisions to the December 2008 amendments provides sufficient time to review comments received on the 2008 amendments and to promulgate any additional revisions that result from this review and still provide those potentially affected facilities ample time to come into compliance.

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 and December 2008 regulatory amendments (71 FR 77266, December 26, 2006; 73 FR 74236, December 5, 2008). 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 Office of Emergency Management Web site at <http://www.epa.gov/emergencies>.

Finally, EPA agrees with those comments that objected to different compliance dates for certain sectors. The Agency agrees that providing one compliance date for all regulated facilities simplifies compliance outreach activities and avoids confusion for the regulated community.

## 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 documented in the docket for this action.

### B. Paperwork Reduction Act

This action does not impose any new information collection burden. This final rule merely extends the compliance dates for facilities subject to the rule. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (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.

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 oil production facilities, which constitute a large percentage of the facilities affected by this rule, generally defines small businesses as having less than \$500,000 in revenues or 500 employees, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

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 rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency head 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 will defer the regulatory burden for small entities by extending the compliance dates in § 112.3. After considering the economic impacts of this rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small 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 merely extends the compliance dates for facilities 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), 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 will 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). This 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 (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. Further, we have concluded that this rule is not likely to have any adverse energy effects because this action is limited to an extension of the compliance date for the preparation of SPCC Plans and does not impact energy supply, distribution, or use.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or

otherwise impractical. Voluntary consensus standards are technical standards (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 action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

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

EPA has determined that this final 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 (CRA), 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. Prior to publication of the final rule in the **Federal Register**, we will submit all necessary information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. Under the CRA, 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). This rule will be effective June 19, 2009.

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

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

Dated: June 11, 2009.

**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.

**Subpart A—[Amended]**

■ 2. Section 112.3 is amended by revising paragraphs (a)(1), (a)(2), (b)(1), (b)(2) and (c) to read as follows:

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

\* \* \* \* \*

(a)(1) 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, and implement the Plan no later than November 10, 2010. If your onshore or offshore 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.

(2) If your farm as defined in § 112.2 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 Plan no later than November 10, 2010. If your farm 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.

(b)(1) If you are the owner or operator of an onshore or offshore facility that 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.

(2) If you are the owner or operator of a farm as defined in § 112.2 that 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.

(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 November 10, 2010. If your onshore or offshore mobile facility 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. This provision does not require that you prepare a new Plan each time you move

the facility to a new site. The Plan may be a general Plan. When you move the mobile or portable facility, you must locate and install it using the discharge prevention practices outlined in the Plan for the facility. The Plan is applicable only while the facility is in a fixed (non-transportation) operating mode.

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