

before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification shall occur as soon as practicable.

(4) The owner or operator shall provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to minimize the delay; and identify a date by which the owner or operator proposes to conduct the performance test. The performance test shall be conducted as soon as practicable after the force majeure occurs.

(5) The decision as to whether or not to grant an extension to the performance test deadline is solely within the discretion of the Administrator. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an extension as soon as practicable.

(6) Until an extension of the performance test deadline has been approved by the Administrator under paragraphs (a)(3), (a)(4), and (a)(5) of this section, the owner or operator of the affected facility remains strictly subject to the requirements of this part.

\* \* \* \* \*

**PART 63—[AMENDED]**

■ 7. The authority citation for part 63 continues to read as follows:

*Authority:* 42 U.S.C. 7401 *et seq.*

**Subpart A—[Amended]**

■ 8. Section 63.2 is amended by adding, in alphabetical order, a definition for “Force majeure” to read as follows:

**§ 63.2 Definitions.**

\* \* \* \* \*

*Force majeure* means, for purposes of § 63.7, an event that will be or has been caused by circumstances beyond the control of the affected facility, its contractors, or any entity controlled by the affected facility that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the affected facility’s best efforts to fulfill the obligation. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the affected facility.

\* \* \* \* \*

■ 9. Section 63.7 is amended by revising paragraphs (a)(2) introductory text and

(a)(2)(ix) and by adding paragraph (a)(4) to read as follows:

**§ 63.7 Performance testing requirements.**

(a) \* \* \*

(2) Except as provided in paragraph (a)(4) of this section, if required to do performance testing by a relevant standard, and unless a waiver of performance testing is obtained under this section or the conditions of paragraph (c)(3)(ii)(B) of this section apply, the owner or operator of the affected source must perform such tests within 180 days of the compliance date for such source.

\* \* \* \* \*

(ix) Except as provided in paragraph (a)(4) of this section, when an emission standard promulgated under this part is more stringent than the standard proposed (see § 63.6(b)(3)), the owner or operator of a new or reconstructed source subject to that standard for which construction or reconstruction is commenced between the proposal and promulgation dates of the standard shall comply with performance testing requirements within 180 days after the standard’s effective date, or within 180 days after startup of the source, whichever is later. If the promulgated standard is more stringent than the proposed standard, the owner or operator may choose to demonstrate compliance with either the proposed or the promulgated standard. If the owner or operator chooses to comply with the proposed standard initially, the owner or operator shall conduct a second performance test within 3 years and 180 days after the effective date of the standard, or after startup of the source, whichever is later, to demonstrate compliance with the promulgated standard.

\* \* \* \* \*

(4) If a force majeure is about to occur, occurs, or has occurred for which the affected owner or operator intends to assert a claim of force majeure:

(i) The owner or operator shall notify the Administrator, in writing as soon as practicable following the date the owner or operator first knew, or through due diligence should have known that the event may cause or caused a delay in testing beyond the regulatory deadline specified in paragraph (a)(2) or (a)(3) of this section, or elsewhere in this part, but the notification must occur before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification shall occur as soon as practicable.

(ii) The owner or operator shall provide to the Administrator a written

description of the force majeure event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to minimize the delay; and identify a date by which the owner or operator proposes to conduct the performance test. The performance test shall be conducted as soon as practicable after the force majeure occurs.

(iii) The decision as to whether or not to grant an extension to the performance test deadline is solely within the discretion of the Administrator. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an extension as soon as practicable.

(iv) Until an extension of the performance test deadline has been approved by the Administrator under paragraphs (a)(4)(i), (a)(4)(ii), and (a)(4)(iii) of this section, the owner or operator of the affected facility remains strictly subject to the requirements of this part.

\* \* \* \* \*

■ 10. Section 63.91 is amended by adding paragraph (g)(1)(i)(O) to read as follows:

**§ 63.91 Criteria for straight delegation and criteria common to all approval options.**

\* \* \* \* \*

(g) \* \* \*  
(1) \* \* \*  
(i) \* \* \*

(O) Section 63.7(a)(4), Extension of Performance Test Deadline

\* \* \* \* \*

[FR Doc. E7-9407 Filed 5-15-07; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 112**

[EPA-HQ-OPA-2006-00949; [FRL-8315-1]

RIN 2050-AG36

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

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency is today extending the dates by which facilities must prepare or amend Spill Prevention, Control, and Countermeasure (SPCC) Plans, and implement those Plans. This action allows the Agency time to promulgate further revisions to the SPCC rule before

owners and operators are required to prepare or amend, and implement their SPCC Plans. EPA expects to propose further revisions to the SPCC rule later this year.

**EFFECTIVE DATE:** This final rule is effective May 16, 2007.

**ADDRESSES:** The public docket for this final rule, Docket ID No. EPA-HQ-OPA-2006-0949, contains the information related to this rulemaking, including the response to comment document. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information may not be publicly available, e.g., Confidential Business Information 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 in <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 rule, contact either Vanessa Rodriguez at (202) 564-7913 ([rodriguez.vannessa@epa.gov](mailto:rodriguez.vannessa@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. Authority**

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

**II. Background**

On July 17, 2002, the Agency published a final rule that amended the SPCC regulations (*see* 67 FR 47042). The rule became effective on August 16, 2002. The final rule included compliance dates in § 112.3 for

preparing amending, and implementing SPCC Plans. The original compliance dates were extended on January 9, 2003 (*see* 68 FR 1348), again on April 17, 2003 (*see* 68 FR 18890), a third time on August 11, 2004 (*see* 69 FR 48794), and a fourth time on February 17, 2006 (*see* 71 FR 77266).<sup>1</sup>

Under the current provisions in § 112.3(a)(1), the owner or operator of a facility (other than a farm) that was in operation on or before August 16, 2002 must make any necessary amendments to its SPCC Plan and fully implement it by October 31, 2007, while the owner or operator of a facility (other than a farm) that came into operation after August 16, 2002, but before October 31, 2007, must prepare and fully implement an SPCC Plan on or before October 31, 2007. Under the current provision in § 112.3(b)(1), the owner or operator of a facility (other than a farm) that becomes operational after October 31, 2007 must prepare and implement an SPCC Plan before beginning operations. In addition, § 112.3(c) requires onshore and offshore mobile facilities to prepare or amend and implement their SPCC Plans on or before October 31, 2007.

On December 26, 2006, EPA finalized a set of SPCC rule amendments that address certain targeted areas of the SPCC requirements based on issues and concerns raised by the regulated community (71 FR 77266). As highlighted in the EPA Regulatory Agenda and the 2005 OMB report on "Regulatory Reform of the U.S. Manufacturing Sector," EPA is considering further amendments to address other areas where regulatory reform may be appropriate. For these additional areas, the Agency expects to issue a proposed rule later this year. Areas where regulatory reform may be appropriate include, but are not limited to, oil and natural gas exploration and production facilities, farms, and qualified facilities. Because the Agency was concerned that it would not be able to propose and promulgate such regulatory amendments before the current October 31, 2007 compliance date, EPA believed it appropriate to provide a further extension of the compliance date, and thus, proposed an extension to the compliance dates on December 26, 2006 (71 FR 77357). This notice finalizes that proposal.

**III. Extension of Compliance Dates**

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

<sup>1</sup>The compliance date for farms is the date that establishes SPCC requirements specifically for farms or otherwise establishes dates by which farms must comply with the provisions of the rule.

facility must prepare or amend and implement its SPCC Plan. As a result of the revisions in § 112.3(a)(1), an owner or operator of a facility (other than a farm) that was in operation on or before August 16, 2002 must make any necessary amendments to his SPCC Plan, and implement that Plan, on or before July 1, 2009. This will allow the owner or operator time to prepare or amend and implement the SPCC Plan in accordance with the July 2002 (67 FR 47042, July 17, 2002) and December 2006 (71 FR 77266, December 26, 2006) amendments, and any subsequent modifications to the SPCC requirements that are promulgated based on amendments that the EPA intends to propose later this year. EPA expects to promulgate such a final rule by the summer of 2008. The facility owner/operator must continue to maintain his existing SPCC Plan until he amends and fully implements the Plan to comply with the revised requirements. Similarly, an owner or operator of a facility (other than a farm) that came into operation after August 16, 2002 through July 1, 2009 must prepare and implement an SPCC Plan on or before July 1, 2009.

Under the revised § 112.3(b)(1), the owner or operator of a facility regulated under the SPCC rule that becomes operational after July 1, 2009 must prepare and implement an SPCC Plan before beginning operations.

This rule similarly extends the compliance dates in § 112.3(c) for mobile facilities. Under this rule, an owner or operator of a mobile facility must prepare or amend and implement an SPCC Plan on or before July 1, 2009, or before beginning operations if operations begin after July 1, 2009.

The Agency believes that such an extension of the compliance dates is appropriate for several reasons. First, this extension will 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 any revised requirements promulgated based on the amendments expected to be proposed later this year, and finalized thereafter, rather than with the existing requirements.

Further, the Agency believes that this extension of the compliance dates will also provide the owner or operator of a facility the time to fully understand the regulatory amendments offered by revisions to the 2002 SPCC rule promulgated on December 26, 2006 (71

FR 77266) and amendments expected to be promulgated by the summer of 2008.<sup>2</sup>

In addition, the Agency intends to issue revisions to the *SPCC Guidance for Regional Inspectors*, to address both the December 2006 revisions and the revisions expected to be proposed later this year. The guidance document is designed to facilitate an understanding of the rule's applicability, to help clarify the role of the inspector in the review and evaluation of the performance-based SPCC requirements, and to provide a consistent national policy on SPCC-related issues. The guidance is available to both the owners and operators of facilities that may be subject to the requirements of the SPCC rule and to the general public on the Agency's Web site at <http://www.epa.gov/oilspill>. The Agency believes that this extension will provide the regulated community the opportunity to take advantage of the material presented in the revised guidance before preparing or amending their SPCC Plans.

#### IV. Response to Comments

The Agency received 28 submissions on the proposed rule (71 FR 77357, December 26, 2006). The discussion below summarizes and responds to the major comments received. A more complete response to comments document can be found in the docket for this rulemaking, EPA-HQ-OPA-2006-0949.

The majority of commenters (nineteen) supported the proposed extension of the compliance date and generally agreed that the extension would allow the Agency time to promulgate further regulatory revisions. Many commenters also noted that the proposed extension would allow the industries potentially affected by those revisions an opportunity to make the necessary changes to their facilities and to their SPCC Plans to comply with the revised requirements expected to be proposed in 2007 and later finalized.

A second group of commenters (nine) supported the proposed extension, but suggested alternate schedules, arguing that EPA's proposed compliance date was premature given the Agency's intent to propose further changes to the SPCC rule in 2007. Several schedules were suggested:

- Tie the compliance dates to promulgation of the rule finalizing the amendments to be proposed in 2007 or, in the event that EPA decides not to go

forward with further modifications to the rule, 12 months after publication of a notice in the **Federal Register** terminating that rulemaking.

- Provide an extension of 18 months from the promulgation of the final amendments to the SPCC rule, thereby providing adequate time for a regulated facility to implement the amendments (i.e., review amendments, develop and/or modify existing Plans, and comply with any final changes to the rule or guidance).
- Set the date for preparing and amending the SPCC Plans to one year following publication of the final amendments, maintaining the six-month separation between the dates for amending and implementing Plans.
- Set a Plan preparation compliance date of July 1, 2009, and an implementation compliance date of January 1, 2010, thereby allowing a facility owner or operator adequate time after Plan amendment to make changes at his facility, properly train employees on the amended Plan requirements, and allow for full implementation of the amended Plan requirements.

The Agency disagrees with those commenters who suggested an alternate schedule to either set uncertain compliance dates in § 112.3 or to further extend the time period for the compliance dates. While the Agency recognizes that a regulated facility owner or operator needs adequate time after EPA takes final action on the proposed amendments to the SPCC Plan requirements to amend or prepare an SPCC Plan and to implement it, we also believe that one year is a reasonable period of time to allow for preparing, amending, and implementing an SPCC Plan following final Agency action on the proposed amendments to the SPCC rule. The Agency intends to develop and publish **Federal Register** notices proposing and then taking final action on further amendments to the SPCC regulatory requirements as soon as possible. At this time, based on the information at hand, the Agency believes that extending the compliance dates in § 112.3 until July 1, 2009 will allow owners and operators an adequate interval to comply with the SPCC rule.

The Agency also disagrees with commenters who requested a revised date for implementing amended SPCC Plans to include a six-month period after the July 1, 2009 date for Plan amendment. For the reasons discussed above, the Agency believes that the July 1, 2009 date for both Plan amendment and implementation is more than adequate. The effect of the Agency's decision to eliminate the gap between Plan preparation or amendment and

implementation was to provide additional time for the owner or operator to prepare or amend the SPCC Plan. The Agency believes that this approach, which allows an owner or operator flexibility in scheduling Plan development or amendment, makes sense given that an owner or operator is not required to submit his SPCC Plans to the Agency. It also simplifies the burden for an owner or operator of an SPCC facility by establishing a single compliance date, while providing additional time for Plan development.

One commenter opposed a compliance date extension for this regulation, arguing that it was not effectively addressing the problems with the regulation, and that the best way to do this would be by completing a complete re-write of the rule. First, the Agency disagrees with the commenter that the SPCC regulation needs to be rewritten. Rather, the Agency believes that it is in the best interest of the regulated community to address areas of confusion that arose after promulgation of the 2002 amendments, and that promulgating a proposal intended to clarify and tailor requirements, particularly for small businesses, and making revisions to the *SPCC Guidance for Regional Inspectors* available to the regulated community will ultimately result in a more effective and complete implementation of the SPCC regulation and in enhanced environmental protection. The Agency also believes that the regulated community needs the additional time allowed by the extension in order to better take advantage of the guidance and any further amendments that are promulgated and that the benefits of this extension outweigh the concerns raised by the opposing commenter. Furthermore, a facility owner or operator subject to the SPCC rule continues to be required to ensure that operations are conducted in a manner that safeguards human health and the environment by preventing oil discharges to navigable waters and adjoining shorelines and by effectively responding in the event of an accidental discharge.

#### V. Applicability to Farms

In the December 2006 final rule amendments, EPA finalized an extension of the compliance dates for the owner or operator of a farm (71 FR 77266), as defined in § 112.2, to prepare or amend and implement the farm's SPCC Plan until the effective date of a rule that establishes SPCC requirements specifically for farms or otherwise establishes dates by which farms must comply with the provisions of the SPCC

<sup>2</sup> As stated in the rule, a facility owner or operator must maintain its existing Plans. A facility owner or operator who wants to take advantage of the 2002 and 2006 regulatory changes may do so, but he will need to modify his existing Plan accordingly.

rule. The Agency has been conducting additional information collection and analyses to determine if differentiated SPCC requirements may be appropriate for farms. Specifically, the Agency has been working with the U.S. Department of Agriculture, as well as the farming community, to collect data that would more accurately characterize oil storage and handling at these facilities. These efforts will allow the Agency to better focus on priorities where substantial environmental improvements can be obtained. The Agency will propose the new compliance dates for farms in a separate **Federal Register** notice. Today's rule does not affect this extended compliance date for farms.

## VI. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action has been determined to be a "significant regulatory action." This final rule would extend the compliance dates in § 112.3, but would have no other substantive effect. However, because of its interconnection with the related SPCC rule amendments finalized on December 26, 2006 (71 FR 77266) which was a significant action under the terms of Executive Order 12866, and because of the upcoming proposal to further amend the SPCC requirements, this action was submitted to OMB for review.

### B. Paperwork Reduction Act

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

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. 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 exploration and 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.

After considering the economic impacts of today's rule on small entities, the Agency concludes that this action would not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the 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 the small entities subject to the rule.

This rule would defer the regulatory burden for small entities by extending the compliance dates in § 112.3. 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.

### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives, and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not

apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with a significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As was explained above, the effect of this action would be to reduce burden and costs for owners and operators of all facilities, including small governments that are subject to the rule.

### E. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Under CWA section 311(o), States may impose additional requirements, including more stringent requirements, relating to the

prevention of oil discharges to navigable waters. EPA recognizes that some States have more stringent requirements (56 FR 54612, (October 22, 1991). This rule would 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*

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This final rule does not have tribal implications, as specified in Executive Order 13175. Today’s rule would not significantly or uniquely affect communities of Indian Tribal governments. Thus Executive Order 13175 does not apply to this rule.

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

Executive Order 13045: “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards, such as materials specifications, test methods, sampling procedures, and business practices that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, NTTAA does not apply.

*J. The 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**. 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 May 16, 2007.

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

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

Dated: May 10, 2007

**Stephen L. Johnson,**  
*Administrator.*

■ For the reasons set forth in the preamble, title 40, chapter I, part 112 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)(1), (b)(2), and (c) to read as follows:

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

**§ 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 July 1, 2009. If your onshore or offshore facility becomes operational after August 16, 2002, through July 1, 2009, 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 July 1, 2009.

\* \* \* \* \*

(b)(1) If you are the owner or operator of an onshore or offshore facility that becomes operational after July 1, 2009, 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 July 1, 2009. If your onshore or offshore mobile facility becomes operational after July 1, 2009, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations. This provision does not require that you prepare a new Plan each time you move the facility to a new site. The Plan may be a general Plan. When you move the mobile or portable facility, you must locate and install it using the discharge prevention practices outlined in the Plan for the facility. The Plan is applicable only while the facility

is in a fixed (non-transportation) operating mode.

\* \* \* \* \*

[FR Doc. 07-2404 Filed 5-15-07; 8:45 am]

BILLING CODE 6560-50-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2005-0121; FRL-7713-1]

### Pythium Oligandrum DV 74; Exemption from the Requirement of a Tolerance

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of *Pythium oligandrum* DV 74 on food crops. Biopreparaty Co. Ltd. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Pythium oligandrum* DV 74.

**DATES:** This regulation is effective May 16, 2007. Objections and requests for hearings must be received on or before July 16, 2007, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2005-EPA-0121. To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only

available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Tessa Milofsky, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-0455; e-mail address: [milofsky.tessa@epa.gov](mailto:milofsky.tessa@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does This Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How Can I Access Electronic Copies of this Document?

In addition to accessing an electronic copy of this **Federal Register** document through the electronic docket at <http://www.regulations.gov>, you may access this "**Federal Register**" document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr>. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at <http://www.gpoaccess.gov/ecfr>.

###### C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2005-EPA-0121 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 16, 2007.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA-HQ-OPP-2005-EPA-0121, by one of the following methods.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

##### II. Background and Statutory Findings

In the **Federal Register** of May 25, 2005 (70 FR 30105) (FRL-7713-1). EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 4F6877) by Biopreparaty, Co. Ltd. Tylišovska I, Prague 6, Czech Republic. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement *Pythium*