

approvable rule revision within 18 months of such a finding, EPA may take interim final action, effective upon publication, to stay the sanctions prior to proposing approval and taking comment on the submittal. Also, a FIP may be promulgated under section 110(c)(1) of the Act, if EPA finds that a SIP revision does not satisfy the minimum criteria established under section 110(k)(2) of the CAA. The FIP may be adopted at any time within 2 years of such a finding, unless the State corrects the deficiency and EPA approves the revision before the FIP is promulgated. Final approval of the revision correcting the identified deficiencies would terminate imposition of the FIP.

We will accept comments on this proposal for the next 60 days. After review of public comments, we intend to publish a rule to promulgate final limited approval and final limited disapproval of the provisions identified above into the Texas SIP.

IX. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: November 18, 2008.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. E8-28162 Filed 11-25-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[EPA-HQ-OPA-2008-0546; FRL-8745-9]

RIN 2050-AG49

Oil Pollution Prevention; Non-Transportation Related Onshore Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the dates by which facilities must prepare or amend Spill Prevention, Control, and Countermeasure (SPCC) Plans, and implement those Plans. The Agency is also proposing to establish dates for farms to prepare or amend their Spill Prevention, Control, and Countermeasure Plans (SPCC Plans), and implement those Plans. EPA had delayed establishing compliance dates for farms pending revisions to the SPCC rule that would specifically address this sector. Two different extension dates are proposed for farms and production facilities that meet the qualified

facilities criteria. Elsewhere in this **Federal Register**, the Agency is finalizing certain tailored and streamlined requirements for facilities subject to the SPCC requirements.

DATES: Written comments must be received by December 26, 2008.

ADDRESSES: Comments should be directed to Docket ID No. EPA-HQ-OPA-2008-0546. Comments may be submitted by one of the following methods:

(1) *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments;

(2) *E-mail:* Comments may be sent by electronic mail (e-mail) to: rcra-docket@epa.gov, Attention Docket ID No. EPA-HQ-OPA-2008-0546.

(3) *Fax:* Comments may be faxed to 202-566-9744, Attention Docket ID No. EPA-HQ-OPA-2008-0546.

(4) *Mail:* The mailing address of the docket for this rulemaking is EPA Docket Center (EPA/DC), Docket ID No. EPA-HQ-OPA-2008-0546, mail code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Attention Docket ID No. EPA-HQ-OPA-2008-0546.

(5) *Hand Delivery:* EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington DC 20460. Attention Docket ID No. EPA-HQ-OPA-2008-0546. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Please note that EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail.

The Federal www.regulations.gov Web site is an "anonymous access" system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of the comment and along with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for

clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

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

publicly available only in hard copy form.

Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number to make an appointment to view the docket is (202) 566-0276.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Superfund, TRI, EPCRA, RMP and Oil

Information Center at (800) 424-9346 or TDD (800) 553-7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412-9810 or TDD (703) 412-3323. For more detailed information on specific aspects of this proposed rule, contact either Vanessa Rodriguez at (202) 564-7913 (rodriguez.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:

I. General Information

A. Does This Action Apply to Me?

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

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 proposed action 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**.

B. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at

your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Authority

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

III. Background

On July 17, 2002, the Agency published a final rule that amended the 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 amended on January 9, 2003 (*see* 68 FR 1348), on April 17, 2003 (*see* 68 FR 18890), on August 11, 2004 (*see* 69 FR 48794), on February 17, 2006 (*see* 71 FR 8462), and on May 16, 2007 (*see* 72 FR 27444).

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). While EPA worked to determine if the agriculture sector warranted specific consideration under the SPCC rule, it delayed the compliance dates for preparing, or amending and implementing SPCC Plans for farms subject to SPCC (*see* 71 FR 77266, December 26, 2006). Under the current provisions in § 112.3(a) and (b), the compliance dates for farms are delayed until the effective date of a rule that establishes SPCC requirements specifically for this sector or that otherwise establishes dates by which farms must comply with the provisions of this part.

On October 15, 2007 (*see* 72 FR 58378), EPA proposed to amend the SPCC rule in order to provide increased clarity, to tailor requirements to particular industry sectors (including farms), and to streamline certain requirements for a facility owner or operator subject to the rule. Elsewhere in this **Federal Register**, the Agency is promulgating amendments to the SPCC rule that tailor and streamline requirements for facilities subject to the SPCC rule.

IV. Proposal To Amend Compliance Dates

Under the current provisions in § 112.3(a) and (b), the owner or operator of a facility that was in operation on or before August 16, 2002 must make any necessary amendments to its SPCC Plan and fully implement it by July 1, 2009; the owner or operator of a facility that came into operation after August 16, 2002, but before July 1, 2009, must prepare and fully implement an SPCC Plan on or before July 1, 2009; and the owner or operator of a facility (excluding production facilities) that becomes operational after July 1, 2009 must prepare and implement a Plan before it begins operations (the owner of

operator of a production facility must prepare and implement a Plan within six months after beginning operations). In addition, § 112.3(c) requires onshore and offshore mobile facilities to prepare or amend and implement SPCC Plans on or before July 1, 2009.

This proposed rule would amend the dates in § 112.3(a), (b) and (c) by which facilities must prepare or amend their SPCC Plans, and implement those Plans to establish a date one year from promulgation of the final rule amending 40 CFR part 112 published elsewhere in this **Federal Register**. Two different extension dates are also proposed for farms and production facilities that meet the qualified facilities criteria in § 112.3(g). Qualified facilities that are farms or production facilities would have two or five years respectively from promulgation of the final rule amending 40 CFR part 112 published elsewhere in this **Federal Register**.

A. Proposal To Extend Compliance Dates for All Facilities

Under the proposed revision to § 112.3(a)(1), the owner or operator of a facility that was in operation on or before August 16, 2002 would be required to make any necessary amendments to its SPCC Plan and fully implement it by November 20, 2009, while the owner or operator of a facility that came into operation after August 16, 2002, but before November 20, 2009, would be required to prepare and fully implement an SPCC Plan on or before November 20, 2009.

Under the proposed revision to § 112.3(b)(1), the owner or operator of a facility that becomes operational after November 20, 2009 would be required to prepare and implement an SPCC Plan before beginning operations. This rule similarly proposes to extend the compliance date in § 112.3(c) for mobile facilities. An owner or operator of a mobile facility would be required to prepare or amend and implement an SPCC Plan on or after November 20, 2009, or before beginning operations if operations begin after November 20, 2009.

The Agency believes that such an extension of the compliance dates is appropriate because it will provide the owner or operator of a facility the opportunity to fully understand the regulatory amendments offered by revisions to the 2002 SPCC rule promulgated on December 26, 2006 (71 FR 77266)¹ and with the revised SPCC

requirements promulgated elsewhere in this **Federal Register**. This proposed extension will allow those potentially affected in the regulated community one full year to make changes to their facilities and to their SPCC Plans necessary to comply with the revised SPCC requirements. EPA believes that a one-year period provides sufficient time for the regulated community to understand the streamlined amendments to the SPCC rule finalized elsewhere in this **Federal Register**.

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

B. Proposal To Establish Compliance Dates for Farms and Extend Compliance Dates for Farms That Meet the Qualified Facility Criteria

Elsewhere in this **Federal Register**, EPA is promulgating a final set of SPCC rule amendments that targets certain areas of the SPCC requirements specific to farms. This proposed rule would establish the dates by which a facility, defined as a farm in § 112.2, would be required to prepare or amend and implement its SPCC Plan. EPA proposes that a farm in operation on or before August 16, 2002 would have to make any necessary amendments to its SPCC Plan and implement that Plan on or before November 20, 2009 and a farm that came into operation after August 16, 2002 would have to prepare and implement an SPCC Plan on or before November 20, 2009 (consistent with other facilities, as established in § 112.3(a)(1)). A farm that comes into operation after November 20, 2009 would have to prepare and implement an SPCC Plan before beginning operations (consistent with other facilities in § 112.3(b)(1)). However, for farms that meet the criteria for a qualified facility as described in § 112.3(g) EPA is proposing a separate compliance date in § 112.3(a)(2) and (b)(2). Under section § 112.3(g), a qualified facility is one that: has an aggregate aboveground storage capacity of 10,000 gallons or less; and has had no single discharge as described in § 112.1(b) exceeding 1,000 U.S. gallons or no two discharges as described in § 112.1(b) each exceeding 42 U.S. gallons within any twelve month period in the three years prior to the SPCC Plan certification date, or since becoming

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

subject to Part 112 if the facility has been in operation for less than three years (other than discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism). If your onshore facility is a farm, as defined in § 112.2, that meets the criteria for a qualified facility as described in § 112.3(g), and was in operation on or before August 16, 2002, you must maintain your Plan, but would be required to amend it, if necessary to ensure compliance with this part, and implement the Plan no later than November 20, 2010. Likewise, if your onshore facility is a farm, as defined in § 112.2, that meets the criteria for a qualified facility as described in § 112.3(g), and becomes operational after August 16, 2002, through November 20, 2010, and could reasonably be expected to have a discharge as described in § 112.1(b), you would be required to prepare and implement a Plan on or before November 20, 2010.

The Agency is proposing this compliance date for farms proposed in this notice for several reasons. The original extension 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. The proposed compliance date would now provide facilities the necessary time to fully understand the regulatory amendments, including the 2002 and 2006 SPCC rule amendments, in addition to those finalized elsewhere in this **Federal Register**.² The proposed dates will allow this sector ample time to make changes to their facilities and to their SPCC Plans necessary to comply with the revised requirements.

The Agency believes the compliance date proposed in this notice for farms that meet the criteria for a qualified facility as described in § 112.3(g) is warranted to ensure adequate time for specific outreach activities by the United States Department of Agriculture (USDA) and others to the widely dispersed farming community. The qualified facility provisions allow

individual owners or operators to develop their own SPCC Plans specific to their operations, and organized education programs at the farm level will be helpful to ensure successful utilization of these provisions of the SPCC regulation. Qualified facility farms are located throughout the country and, given this broad geographic reach, additional time is needed to conduct education programs and provide information to farms about their eligibility for qualified facility status and its provisions. The USDA, in concert with others, such as state extension services and the National Resources Conservation Service, will seek to provide this training and information in most counties across the country to the diverse farming community within the additional time proposed in this notice. The Agency seeks comment on the proposed compliance dates by which owners and operators of farms including those that meet the qualified facilities criteria, would be required to prepare or amend and implement their SPCC Plans in accordance with amendments to the SPCC rule. Any alternative dates presented must include appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

C. Proposal To Extend Compliance Dates for Production Facilities That Meet the Qualified Facility Criteria

The final set of SPCC rule amendments promulgated elsewhere in this **Federal Register**, also targets certain areas of the SPCC requirements specific to production facilities. EPA is proposing a separate compliance date for production facilities that meet the criteria for a qualified facility as described in § 112.3(g). If your onshore facility is a production facility, as defined in § 112.2, that meets the criteria for a qualified facility as described in § 112.3(g), and was in operation on or before August 16, 2002, you must maintain your Plan, but would be required to amend it, if necessary to ensure compliance with this part, and implement the Plan no later than November 20, 2013. Likewise, if your onshore facility is a production facility, as defined in § 112.2, that meets the criteria for a qualified facility as described in § 112.3(g), and becomes operational after August 16, 2002, through November 20, 2013, and could reasonably be expected to have a discharge as described in § 112.1(b), you would be required to prepare and implement a Plan on or before November 20, 2013. If you are the owner or operator of an oil production facility,

as defined in § 112.2, that meets the criteria for a qualified facility as described in § 112.3(g), and becomes operational after November 20, 2013, 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.

The Agency is proposing this compliance date for production facilities for several reasons. The original extension allowed the Agency to conduct additional information collection and analyses to determine if additional differentiated SPCC requirements may be appropriate for production facilities. The proposed compliance date would now provide these facilities the necessary time to fully understand the regulatory amendments, including the 2002 and 2006 SPCC rule amendments, in addition to those finalized elsewhere in this **Federal Register**. The proposed dates will allow this sector ample time to make changes to their facilities and to their SPCC Plans necessary to comply with the revised requirements. This extension will also provide the Agency with sufficient time to initiate work with relevant trade associations, the Interstate Oil and Gas Compact Commission (IOGCC) and the Department of Energy (DOE) on outreach and compliance assistance tools to help qualified oil production facilities develop their self-certified Plans. Finally, given: (1) The large number of marginal or stripper wells in the U.S.³; (2) that they contribute a significant portion of the country's oil production; and (3) EPA's understanding of the production process, the particular aboveground oil storage container capacities, and the nature of the fluids handled and operations conducted at certain small oil production facilities, the Agency is proposing additional time for these facilities to come into compliance.

The Agency seeks comment on the proposed compliance dates by which owners and operators of production facilities that meet the qualified facilities criteria, would be required to prepare or amend and implement their SPCC Plans in accordance with amendments to the SPCC rule. Any alternative dates presented must include appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

² As stated in the rules, farms must maintain their existing Plans, to the extent they are required to have one. However, farms that want to take advantage of the regulatory changes finalized in a separate notice in this **Federal Register** may do so, but the owner and operator of the facility will need to modify their existing Plan accordingly.

³ The Interstate Oil and Gas Compact Commission estimates that there are 422,255 marginal oil wells as of January 1, 2007 (IOGCC Marginal Wells: 2007 Report)

IV. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

This proposed action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This proposed rule would merely extend the compliance dates for facilities subject to the rule.

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 production facilities, which constitute a large percentage of the facilities affected by this proposed 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 this proposed rule on small entities, the Agency concludes that this proposed 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 proposed rule on small entities.” 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This proposed rule would 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 action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This proposed action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule would merely extend the compliance 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 proposed 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 encourages States to supplement the Federal SPCC regulation and recognizes that some States have more stringent requirements (56 FR 54612, (October 22, 1991). This proposed rule would not preempt State law or regulations. Thus, Executive Order 13132 does not apply to this proposed rule.

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

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Today’s proposed rule would not significantly or uniquely affect communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

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

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

This proposed action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

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. NNTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

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

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

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

List of Subjects in 40 CFR Part 112

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

Dated: November 20, 2008.

Stephen L. Johnson,
Administrator.

For the reasons set forth in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 112—OIL POLLUTION PREVENTION

1. The authority citation for part 112 continues to read as follows:

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

2. Section 112.3 is amended by revising paragraphs (a), (b) and (c) to read as follows: *§ 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.*

* * * * *

(a)(1) Except as provided in (a)(2), (a)(3), and (a)(4), 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 20, 2009. If your onshore or offshore facility becomes operational after August 16, 2002, through November 20, 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 November 20, 2009.

(2) If your onshore facility is a farm, as defined in § 112.2, that 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 20, 2009. If your onshore facility is a farm, as defined in § 112.2, that becomes operational after August 16, 2002, through November 20, 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 November 20, 2009.

(3) If your onshore facility is a farm, as defined in § 112.2, that meets the criteria for a qualified facility as described in § 112.3(g), 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 Plan no later than November 20, 2010. If your onshore facility is a farm, as defined in § 112.2, that meets the criteria for a qualified facility as described in § 112.3(g), and becomes operational after August 16, 2002, through November 20, 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 20, 2010.

(4) If your onshore facility is a production facility, as defined in § 112.2, that meets the criteria for a qualified facility as described in § 112.3(g), 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 Plan no later than November 20, 2013. If your onshore facility is a production facility, as defined in § 112.2, that meets the criteria for a qualified facility as described in § 112.3(g), and becomes operational after August 16, 2002, through November 20, 2013, 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 20, 2013.

(b)(1) If you are the owner or operator of an onshore or offshore facility (excluding oil production facilities) that becomes operational after November 20, 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.

(2) If your onshore facility is a farm, as defined in § 112.2, that becomes operational after November 20, 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. If your onshore facility is a farm, as defined in § 112.2, that meets the criteria for a qualified facility as described in § 112.3(g), and becomes operational after November 20, 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.

(3) If you are the owner or operator of an oil production facility that becomes operational after November 20, 2009, 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. If you are the owner or operator of an oil production facility, as defined in § 112.2, that meets the criteria for a qualified facility as described in § 112.3(g), and becomes operational after November 20, 2013, 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 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 20, 2009. If your onshore or offshore mobile facility becomes operational after November 20, 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.

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