

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 112**

[EPA-HQ-OPA-2011-0838; FRL-9481-4]

RIN 2050-AG59

Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Rule—Compliance Date Amendment for Farms**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.**SUMMARY:** EPA is taking direct final action to amend the date by which farms must prepare or amend, and implement their Spill Prevention, Control, and Countermeasure Plans to May 10, 2013.**DATES:** This rule is effective on November 7, 2011 without further notice, unless EPA receives adverse comment by November 2, 2011. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. For more information on effective and comment dates, see **SUPPLEMENTARY INFORMATION**.**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OPA-2011-0838, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *Email:* Docket.RCRA@epa.gov.

- *Fax:* 202-566-9744.

- *Mail:* EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *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-2011-0838. 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: Direct your comments to Docket ID No. EPA-HQ-OPA-2011-0838. 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 <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and 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 <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure 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-HQ-OPA-2011-0838. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566-1744. EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC.

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 Lynn Beasley at (202) 564-1965 (beasley.lynn@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: EPA is providing 15 days for adverse comment. EPA is providing a review time of 15 days because the amendment to the compliance date is straightforward and there are no additional amendments to the regulation. In addition, there is a certain urgency of to this rule due to the impact that flooding has had on farms to comply with this regulation, the low likelihood of comment, and the fact that the targeted community is aware that an extension is under consideration. Interested parties should be able to express their comments within the 15 day period through electronic means. There is no requirement to delay the effective date, because this rule relieves a restriction and grants an exemption by extending the compliance date of the Spill, Prevention, Control, and Countermeasure rule. 5 U.S.C. 553(d)(1). It is also not a "major rule" for the purposes of the Congressional Review Act. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.**I. Why is EPA using a direct final rule?**

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment since this action provides owners and operators of farms an additional 18 months to prepare or amend, and implement their Spill Prevention, Control, and Countermeasure (SPCC) Plan. This action does not add an additional burden to comply with the regulations contained in 40 CFR part 112—Oil Pollution Prevention. However, in the "Proposed Rules" section of today's **Federal Register**, we are also publishing a separate proposed rule to provide owners and operators of farms an additional 18 months to prepare or amend, and implement their SPCC Plan, if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

II. Does this action apply to me?

Industry sector	NAICS code
Farms	111, 112
Government	92

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

III. What should I consider as I prepare my comments for EPA?

A. Submitting CBI. Do not submit this information to EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR part 2.

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.

- Make sure to submit your comments by the comment period deadline identified.

IV. What does this amendment do?

This direct final rule amends the date by which farms as defined in section 112.2 must prepare or amend, and implement their SPCC Plan to May 10, 2013. A farm is defined in this section as a facility on a tract of land devoted to the production of crops or raising of animals, including fish, which produced and sold, or normally would have produced and sold, \$1,000 or more of agricultural products during a year.

On June 19, 2009 (74 FR 29136), EPA issued a final rule in the **Federal Register** that amended the dates by which facilities must prepare or amend their SPCC Plans, and implement those Plans to November 10, 2010. Then on October 14, 2010 (75 FR 63093), EPA issued a final rule in the **Federal Register** with a new compliance date of November 10, 2011, by which certain facilities must prepare or amend and implement their SPCC Plans, providing an additional year for the remaining facilities. This action further extends the compliance date to May 10, 2013 for the owners or operators of farms as defined in 40 CFR 112.2. The Agency recognizes that the owners or operators of some facilities excluded from the extension of the compliance date may still require additional time to amend or prepare their SPCC Plans as a result of either non-availability of qualified personnel, or delays in construction or equipment delivery beyond the control and without the fault of the owner or operator. If so, the owner or operator of the facility may submit a written request for additional time to amend or prepare a SPCC Plan to the Regional Administrator in accordance with § 112.3(f). This rule is not the vehicle for other extensions. EPA is not extending the compliance date for any other facilities as other facilities are not season-dependent and are less likely to be impacted by severe weather conditions. Additionally, other facilities retain the alternative mechanism for requesting an extension to the compliance date through § 112.3(f). Interested facilities may also petition the agency to consider additional rulemaking.

A large segment of the continental United States was affected by flooding during the spring and summer of 2011. Other areas were impacted by devastating fires and drought conditions. Many counties in several States were declared disaster areas by either the Federal or their State government or both. EPA has received a number of letters and other

correspondence, from State Agricultural Departments and other parties, explaining the impact of these recent floods on the owners and operators of farms and their ability to comply with the SPCC rule. These owners and operators have experienced interruptions in planting, cultivation and harvesting due to these floods. According to the Federal Emergency Management Agency (FEMA) in 2011, the Agency issued 56 Major Disaster/Emergency Declarations specifically associated with flooding events. According to FEMA's 2011 data, approximately two thirds of the fifty states had a FEMA flooding Major Disaster/Emergency Declarations. Almost a quarter of the fifty states had multiple FEMA declarations due to flooding.¹ These declarations are widespread throughout the crop production areas of the country. The Agency was also advised in the correspondence that there may be a lack of available qualified Professional Engineers (PEs) in some areas of the country to assist in the preparation, implementation, and review of SPCC Plans for farms.

In addition, despite the targeted farm outreach efforts by EPA over the past ten months, the sheer number of farms throughout the U.S. makes it a challenge to reach those owners and operators of farms that may be subject to the SPCC Plan regulations. As a result, the Agency believes that farms, as defined in section 112.2, need additional time to come into compliance with the requirements to prepare or amend and implement a SPCC Plan. Thus, the Agency has decided to extend the compliance date by which owners or operators of a farm must prepare or amend and implement a SPCC Plans to May 10, 2013. The additional 18 months allows enough time for farms to come in compliance with this regulation. The owners and operators of farms are strongly encouraged not to delay, and to take advantage of the off-season for planting and growing, in preparing their SPCC Plans. However, any farm owner or operator who is not able to come into compliance by May 10, 2013, and wishes to seek a further extension of the compliance date, should submit a written request to the Regional Administrator of the EPA Regional Office for the State where the farm is located in accordance with paragraph (f) of 40 CFR 112.3.

The amendment to the compliance date does not remove the regulatory requirement for owners or operators of farms in operation before August 16,

¹ <http://www.fema.gov/news/disasters.fema>.

2002, to have and to maintain and continue implementing a SPCC Plan in accordance with the SPCC regulations then in effect. Such owners and operators continue to be required to maintain plans during the interim until the applicable compliance date for amending and implementing the amended Plans. In addition, the amendment of the compliance date does not relieve the owners and operators of farms from the potential liability under the Clean Water Act or other environmental statutes or regulations for any spills (see 40 CFR part 110) that may occur.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This 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 Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This direct final action does not impose any new information collection burden. The amendments in this direct final rule simply extend the compliance date for farms. This direct final rule does not change any reporting requirements in the general provisions. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing subparts of 40 CFR 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. Subparts that will be added through separate rulemakings will document the respective information collection requirements in their own ICR documents.

C. Regulatory Flexibility Act (RFA)

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

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration’s regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The direct final rule simply amends the date for compliance. The direct final rule does not itself add any additional subparts or requirements. The direct final rule will not impose any new requirements on small entities.

D. Unfunded Mandates Reform Act (UMRA)

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. The amendments in this final rule change the dates for compliance for farms.

E. Executive Order 13132: Federalism

Executive Order (EO) 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 EO 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 EO 13132.

This amendment applies directly to farms. They do not apply to governmental entities unless the government entity owns a farm, as defined in 40 CFR 112.2 Definitions. This regulation also does not limit the power of States or localities to regulate farms. Thus, EO 13132 does not apply to this final rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The changes in this direct final rule do not result in any changes to the requirements of the 2009 rule. Thus Executive Order 13175 does not apply to this action.

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

This direct final rule is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The changes in this direct final rule do not result in any changes to the requirements applicable to farms, final rule other than the date for compliance.

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

This 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, 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 the direct final amendments will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because the amendments do not affect the level of protection provided to human health or the environment.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective November 7, 2011.

List of Subjects in 40 CFR Part 112

Oil pollution prevention, Farms, Compliance date, Reporting and recordkeeping requirements.

Dated: October 13, 2011.

Lisa P. Jackson,
Administrator.

For the reasons set out above, 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; and E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

■ 2. Section 112.3 is amended by adding paragraph (a)(3) to read as follows:

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

* * * * *

(a) * * *

(3) 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 amended Plan no later than May 10, 2013. If your farm becomes operational after August 16, 2002, through May 10, 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 May 10, 2013. If your farm becomes operational after May 10, 2013, 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.

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[FR Doc. 2011-27047 Filed 10-17-11; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043-4043-01]

RIN 0648-XA766

Gulf of Mexico Reef Fish Fishery; Closure of the 2011 Gulf of Mexico Commercial Sector for Greater Amberjack

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial sector for greater amberjack in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf). These actions are necessary to reduce overfishing of the Gulf greater amberjack resource.

DATES: The closure of the commercial sector for Gulf greater amberjack is

effective 12:01 a.m., local time, October 20, 2011, until 12:01 a.m., local time, on January 1, 2012.

ADDRESSES: Electronic copies of the final rule for Amendment 30A, the Final Supplemental Environmental Impact Statement (FSEIS) for Amendment 30A, and other supporting documentation may be obtained from Steve Branstetter, NMFS, Southeast Regional Office, 263 13th Avenue, South, St. Petersburg, FL 33701; telephone: 727-824-5305.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone: 727-824-5305, e-mail: *Steve.Branstetter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

The 2006 reauthorization of the Magnuson-Stevens Act implemented new requirements that annual catch limits (ACLs) and accountability measures (AMs) be established to end overfishing and prevent overfishing from occurring. AMs are management controls to prevent ACLs from being exceeded, and to correct or mitigate overages of the ACL if they occur. Section 303(a)(15) of the Magnuson-Stevens Act mandates the establishment of ACLs at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

On July 3, 2008, NMFS issued a final rule (73 FR 38139) to implement Amendment 30A to the FMP (Amendment 30A). Amendment 30A established a commercial quota for Gulf greater amberjack of 503,000 lb (228,157 kg) and an AM that would go into effect if the commercial quota for greater amberjack is exceeded. In accordance with regulations at 50 CFR 622.49(a)(1)(i), when the applicable commercial quota is reached, or projected to be reached, the Assistant Administrator for Fisheries, NOAA, (AA), will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year. If despite such closure, commercial landings exceed the quota, the AA will reduce the quota the year following an overage by the amount of the overage of the prior fishing year.