

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[EPA-HQ-OPA-2007-0584; FRL-8770-7]

RIN 2050-AG16

Oil Pollution Prevention; Non-Transportation Related Onshore Facilities; Spill Prevention, Control, and Countermeasure Rule – Final Amendments

AGENCY: Environmental Protection Agency.

ACTION: Final Rule: Delay of Effective Date and Request for Comment.

SUMMARY: The Environmental Protection Agency (EPA) is delaying by sixty days the effective date of the final rule that amends the Spill Prevention, Control, and Countermeasure (SPCC) regulations published in the *Federal Register* on December 5, 2008. Thus, the amendments will become effective on April 4, 2009. EPA additionally is requesting public comment on the extension of the effective date and its duration, and on the regulatory amendments contained in the final rule.

DATES: This document is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] The effective date of FR Doc. E8-28159, published in the *Federal Register* on December 5, 2008 (73 FR 74236) is delayed to April 4, 2009.

Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OPA-2007-0584,

by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Mail: EPA Docket, Environmental Protection Agency, Mail code: 2822T, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460.
- Hand Delivery: EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, D.C. 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-2007-0584. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at 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 www.regulations.gov website 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 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 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 www.regulations.gov or in hard copy at the EPA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, D.C. 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 for the EPA 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 at 800-553-7672 (hearing impaired). In the Washington, D.C. metropolitan area, contact the Superfund, TRI, EPCRA, RMP, and Oil Information Center at 703-412-9810 or TDD 703-412-3323. For more detailed information on specific aspects of this final rule, contact either Vanessa E. Principe at 202-564-7913 (principe.vanessa@epa.gov), or Mark W. Howard at 202-564-1964 (howard.markw@epa.gov), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, D.C., 20460-0002, Mail Code 5104A.

SUPPLEMENTARY INFORMATION: In accordance with the January 20, 2009, White House memorandum entitled, "Regulatory Review," and the memorandum from the Office of Management and Budget entitled, "Implementation of Memorandum Concerning Regulatory Review" (M-09-08, January 21, 2009) (OMB memorandum), EPA is delaying the effective date

of the final rule that amends the Spill Prevention, Control, and Countermeasure (SPCC) regulations promulgated in the *Federal Register* on December 5, 2008 (73 FR 74236) under section 311 of the Clean Water Act and seeking public comment on the extension and its duration. The effective date of the final rule would have been February 3, 2009. With the 60-day extension, the amendments will become effective on April 4, 2009. The SPCC rule amendments clarify, tailor, and streamline certain existing requirements for those facility owners or operators who are required to prepare and implement an SPCC Plan (or "Plan") to prevent the discharge of oil into or upon navigable waters of the United States or adjoining shorelines.

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the Agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for delaying the effective date of the final rule amending the SPCC regulations without prior proposal and opportunity for comment because notice and comment would be impracticable and unnecessary. Consistent with the January 21, 2009 OMB memorandum "Implementation of Memorandum Concerning Regulatory Review," the EPA Administrator has chosen this rule for additional assessment of policy and legal issues. Notice and comment is impracticable because the rule currently has an effective date of February 3, 2009, and the Agency can not adequately comply with the presidential directive without delaying the effective date of the rule. We have also determined that notice and comment is unnecessary because there are no applicable compliance dates for the final rule until well after the April 4, 2009 effective date.

The Agency is taking this action to ensure that the rule reflects proper consideration of all relevant facts. While the Agency is requesting public comment on the entire final rule, the Agency is specifically interested in receiving comments on the optional approaches for produced water containers and the criteria for qualified oil production facilities. The preamble and

regulatory text for the optional approaches for exempting or providing containment for produced water containers can be found at §§112.2, 112.3(d)(vi), 112.3(d)(vii), 112.5(b), 112.5(c), 112.9(c)(6), and Section V.M.7 of the December 5, 2008 document, 73 FR 74285 through 74290. The preamble and regulatory text on the criteria for the identification of oil production facilities that are qualified and eligible to prepare self-certified Plans can be found at §112.3(g)(2)(ii) and Section V.M.6 of the December 5, 2008 document, 73 FR 74280 through 74285. The Agency requests that comments include an appropriate rationale and supporting data for Agency review and consideration. Following the comment period, EPA will take appropriate steps to ensure careful evaluation of the comments received and will consider whether further amendment of the final rule is necessary.

Finally, the Agency is also reviewing the dates by which owners or operators of facilities must prepare or amend their SPCC Plans, and implement those Plans. EPA intends to address these dates in a separate notice.

STATUTORY AND EXECUTIVE ORDER REVIEWS:

A. Executive Order 12866: Regulatory Planning and 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 the Executive Order.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This action results in no changes to the information collection requirements of the SPCC rule and will have no impact on the information collection estimate of project cost and hour burden previously submitted to OMB.

C. Regulatory Flexibility Act

Today's final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because, although the rule is subject to the APA, the Agency has invoked the "good cause" exemption under 5 U.S.C. 553(b), therefore, it is not subject to the notice and comment requirement.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for state, local, or tribal governments or the private sector. This 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 and 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 action only delays the effective date of the December 5, 2008 rule and does not impose any additional enforceable duty.

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 action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action will not impose direct compliance costs on state or local governments, and will not preempt state law. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications, as specified in Executive Order 13175 (59 FR 22951, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because the NSPS for petroleum refineries are based on technology performance. This action is not subject to Executive Order 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 presents a disproportionate risk to children.

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

This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (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) (Pub. L. No. 104-113; 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when EPA decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

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

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

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

K. Congressional Review Act

The Congressional Review Act, 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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 112

Environmental protection, Animal fats and vegetable oils, Hot-mix Asphalt, Farms, Flammable and combustible materials, Integrity testing, Loading racks, Materials handling and storage, Natural gas, Oil pollution, Oil and gas exploration and production, Oil spill response, Penalties, Petroleum, Reporting and recordkeeping requirements, Secondary containment, Security, Tanks, Unloading racks, Water pollution control, Water resources.

Dated: January 29, 2009

Lisa P. Jackson,
Administrator.

[FR Doc. 2009-2335 Filed 02/02/2009 at 8:45 am; Publication Date: 02/03/2009]