

Dated: December 19, 2006.

Edward Callahan,

Acting Director, Office of Air and Radiation.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[EPA-HQ-OPA-2006-0949; FRL-8258-4]

RIN 2050-AG36

Oil Pollution Prevention; Non-Transportation Related Onshore Facilities

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to extend the dates by which facilities must prepare or amend Spill Prevention, Control, and Countermeasure Plans (SPCC Plans), and implement those Plans. This action would allow the Agency time to promulgate further revisions to the July 17, 2002 SPCC rule (in addition to those published elsewhere in this **Federal Register**) before owners and operators are required to meet requirements of the rule related to preparing or amending, and implementing SPCC Plans. EPA expects to propose further revisions to the SPCC rule in 2007.

DATES: Written comments must be received by January 25, 2007.

ADDRESSES: Comments should be directed to Docket ID No. EPA-HQ-OPA-2006-0949. 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; or

(2) Mail: The mailing address of the docket for this rulemaking is EPA Docket Center (EPA/DC), Docket ID No. EPA-HQ-OPA-2006-0949, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460.

(3) Hand Delivery: Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Please note that per EPA's policy, 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 [regulations.gov](http://www.regulations.gov).

Please also note that the Federal [regulations.gov](http://www.regulations.gov) website 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.

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 B102, 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. 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 amended 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 8462).

Under the current provisions in § 112.3(a) and (b), 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 October 31, 2007; a facility 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. In addition, § 112.3(c) requires onshore and offshore mobile facilities to prepare or amend and implement SPCC Plans on or before October 31, 2007.

Elsewhere in today's **Federal Register**, EPA finalized a set of SPCC rule amendments that address certain targeted areas of the SPCC requirements and a number of issues and concerns raised by the regulated community. 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 in 2007. Areas where regulatory reform may be appropriate include, and are not limited to, oil and natural gas exploration and production, farms, and Tier I facilities. Because the Agency may not be able to promulgate such regulatory amendments before the current October 31, 2007 compliance date for SPCC becomes effective, EPA believes it is appropriate to provide an extension of the compliance date.

III. Proposal to Extend the Compliance Dates

This proposed rule would extend the dates in § 112.3(a), (b) and (c) by which a facility must prepare or amend and implement its SPCC Plan. As a result of

this proposed rule, a facility that was 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 July 1, 2009. This would allow owners and operators of SPCC regulated facilities time to prepare or amend and implement its SPCC Plan in accordance with the modifications to the 2002 SPCC requirements the EPA plans to propose in 2007. A facility that came into operation after August 16, 2002 would have to prepare and implement an SPCC Plan on or before July 1, 2009.

This proposed rule would similarly extend the compliance dates in Section 112.3(c) for mobile facilities. Under this proposal, a mobile facility must prepare or amend and implement an SPCC Plan on or before July 1, 2009.

The Agency believes the extension of the compliance date proposed in this notice is warranted for several reasons. The Agency is not in a position, at this time, to indicate all the areas for possible regulatory reform that may be addressed as part of a 2007 SPCC proposal. This extension would 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 the revised requirements expected to be proposed in 2007, rather than with the existing requirements.

Further, the Agency believes that this proposed extension of the compliance dates would also provide facilities time necessary to fully understand the regulatory relief offered by revisions to the 2002 SPCC rule as finalized elsewhere in today's **Federal Register**.¹

In addition, the Agency intends to issue revisions to the *SPCC Guidance for Regional Inspectors*, to address both the revisions finalized elsewhere in today's **Federal Register**, and the upcoming revisions expected to be proposed in 2007. 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 also 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 proposed extension would provide the regulated community the opportunity to understand the material presented in the revised guidance before preparing or amending their SPCC Plans.

The Agency is seeking comment on this proposal to extend the date by which SPCC Plans must be amended and implemented in accordance with amendments to the SPCC Rule. Any alternative approaches presented must include appropriate rationale and supporting data in order for the Agency to be able to consider them for final action.

IV. Applicability to Farms

Elsewhere in today's **Federal Register**, EPA finalized an extension of the compliance dates for the owner or operator of a farm, as defined in § 112.2, to prepare or amend and implement the farm's SPCC Plan until the effective date of a rule addressing whether to provide differentiated requirements for farms. The Agency will be conducting additional information collection and analysis to determine if differentiated SPCC requirements may be appropriate for farms. The Agency will be working with USDA to collect data that would more accurately characterize oil handling at these facilities, thereby allowing the Agency to focus on priorities where substantial environmental improvements can be obtained.

Today's proposal does not affect this extended compliance date for farms. To the extent that the revisions EPA intends to propose in 2007 address differentiated requirements for farms, the ultimate compliance date for farms and other facilities may be the same. In any case, the Agency will announce the new compliance date for farms in the **Federal Register**.

V. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under the terms of Executive Order 12866, this action has been judged as not a "significant regulatory action" because it 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 elsewhere in this **Federal Register** notice (see discussion above in section III), which is a significant action under the terms of Executive Order 12866, this

action was nonetheless 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; (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 proposed 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 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 relieve the regulatory burden for small entities by extending the compliance dates in § 112.3.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

¹ As stated in the rules, facilities must maintain their existing plans, to the extent they are required to have one. However, facilities that want to take advantage of the regulatory changes being finalized today may do so, but the owner and operator of the facility will need to modify their existing plan accordingly.

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 significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed 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. This proposed rule would reduce burden and costs for all facilities.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. As was explained above, the effect of the proposed rule 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 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

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date.

Today’s proposed rule would not significantly or uniquely affect communities of Indian tribal governments. Therefore, the Agency has not consulted with a representative organization of tribal groups.

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

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.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 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 proposed 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 proposed rule does not involve technical standards. Therefore, NTTAA does not apply.

List of Subjects in 40 CFR Part 112

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

Dated: December 12, 2006.

Stephen L. Johnson,
Administrator.

For the reasons set forth in the preamble, title 40 CFR, chapter I, part 112 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 amended by revising paragraphs (a)(1) and (b)(1) as proposed to be amended elsewhere in this **Federal Register** on December 26, 2006 and revising paragraph (c) to read as follows:

Subpart A—[Amended]

§ 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.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 7, 11, 12, 13, 23, 42, and 52

[FAR Case 2004-032; Docket 2006-0020; Sequence 13]

RIN 9000-AK65

Federal Acquisition Regulation; FAR Case 2004-032, Biobased Products Preference Program

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 9002 of the *Farm Security and Rural Investment Act of 2002* (FSRIA), as amended by Sections 205 and 943 of the *Energy Policy Act of 2005*. Entitled *Federal Procurement of Biobased Products*, section 9002 requires that a procurement preference be afforded biobased products within items designated by the Secretary of Agriculture.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before February 26, 2007 to be considered in the formulation of a final rule.

The Councils, in collaboration with OFPP, invite interested parties from both the private and public sector to provide comments on the biobased procurement preference program and the requirement that Federal agencies shall consider maximum practicable use

of biobased products when acquiring products and services.

ADDRESSES: Submit comments identified by FAR case 2004-032 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for any document by first selecting the proper document types and selecting "Federal Acquisition Regulation" as the agency of choice. At the "Keyword" prompt, type in the FAR case number (for example, FAR Case 2006-001) and click on the "Submit" button. Please include any personal and/or business information inside the document.

You may also search for any document by clicking on the "Advanced search/document search" tab at the top of the screen, selecting from the agency field "Federal Acquisition Regulation", and typing the FAR case number in the keyword field. Select the "Submit" button.

- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2004-032 in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact William Clark, Procurement Analyst, at (202) 219-1813. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501-4755. Please cite FAR case 2004-032.

SUPPLEMENTARY INFORMATION:

A. Background

On May 13, 2002, the President signed the *Farm Security and Rural Investment Act of 2002* (FSRIA), Public Law 107-171. Section 9002 of the Act, entitled *Federal Procurement of Biobased Products*, requires that each Federal agency ("Procuring Agency" as amended by the *Energy Policy Act of 2005*), which procures products within items designated by the Secretary of Agriculture, give a preference to qualified biobased products, subject to specified exceptions. This same section requires the Secretary of Agriculture to designate items which contain products which are or can be produced with biobased products, establish recommended practices with respect to the procurement of products within the designated items, and provide