

203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

Since this action imposes requirements only on the State of Utah, it also does not have Tribal implications. It will not have a substantial direct effect on one or more Indian Tribes, 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 by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action also does not have Federalism implications because 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 (64 FR 43255, August 10, 1999), because it will simply maintain the relationship and the distribution of power and responsibilities between EPA and the States as established by the CAA. This SIP call is required by the CAA because EPA has found the current SIP is substantially inadequate to attain or maintain the NAAQS or comply with other CAA requirements. Utah's direct compliance costs will not be substantial because the SIP call requires Utah to submit only those revisions necessary to address the SIP deficiencies and applicable CAA requirements.

EPA interprets Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard, but instead requires Utah to revise a State rule to address requirements of the CAA.

Section 12 of the National Technology Transfer and Advancement Act of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with the National Technology Transfer and Advancement Act, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. In making a finding of a SIP deficiency, EPA's role is to review existing information against

previously established standards. In this context, there is no opportunity to use VCS. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), since it only requires the State of Utah to revise Utah rule R307-107 to address requirements of the CAA.

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 action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 17, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: March 31, 2011.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2011-9215 Filed 4-15-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[EPA-HQ-OPA-2008-0821; FRL-9297-3]

RIN 2050-AG50

Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Rule—Amendments for Milk and Milk Product Containers

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA or the Agency) is amending the Spill Prevention, Control, and Countermeasure (SPCC) rule to exempt all milk and milk product containers and associated piping and appurtenances from the SPCC requirements. The Agency is also removing the compliance date requirements for the exempted containers.

DATES: This final rule is effective on June 17, 2011.

ADDRESSES: The public docket for this rulemaking, Docket ID No. EPA-HQ-OPA-2008-0821, contains the information related to this rulemaking, including the response to comments document. All documents in the docket are listed in the index at <http://www.regulations.gov>. Although listed in the index, some information may not be publicly available, such as Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the EPA docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Public Reading Room is 202-566-1744, and the telephone number to make an appointment to view the docket is 202-566-0276.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Superfund, TRI, EPCRA, RMP, and Oil Information Center at 800-424-9346 or TDD at 800-553-7672 (hearing impaired). In the Washington, DC 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 Gregory Wilson at 202-564-7989 (*wilson.gregory@epa.gov*) or, Vanessa E. Principe at 202-564-7913 (*principe.vanessa@epa.gov*), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0002, Mail Code 5104A.

SUPPLEMENTARY INFORMATION: The contents of this preamble are:

- I. General Information
- II. Entities Potentially Affected by This Final Rule
- III. Statutory Authority and Delegation of Authority
- IV. Background
- V. This Action
 - A. Finalize Modified Amendments
 - 1. Industry Sanitary Standards and Construction Requirements
 - 2. Summary of Comments
 - 3. Response to Comments
 - 4. Universe Affected by This Action
 - B. Removal of Compliance Date for Exempted Containers, Associated Piping and Appurtenances
- VI. Statutory and Executive Order Reviews

- A. Executive Orders 12866 and 13563: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act

I. General Information

On January 15, 2009, EPA proposed to amend the Spill Prevention, Control, and Countermeasure (SPCC) rule to tailor and streamline the requirements for the dairy industry. Specifically, EPA proposed to exempt milk containers and associated piping and appurtenances from the SPCC requirements provided

they are constructed according to the current applicable 3-A Sanitary Standards, and are subject to the current applicable Grade “A” Pasteurized Milk Ordinance (PMO) or a State dairy regulatory requirement equivalent to the current applicable PMO. The Agency is modifying the proposed exemption to exempt all milk containers, and associated piping and appurtenances and is further extending the exemption to also include all milk product containers, and associated piping and appurtenances. Finally, the Agency is removing the compliance date requirements for the exempted containers.

EPA estimates that dairy farms will incur an average annualized savings of \$133 million and milk product manufacturing plants an average annualized savings of \$13 million (estimates based on 2009\$ and a 7% discount rate). In aggregate, the total annualized savings is estimated at \$146 million. The Regulatory Impact analysis, which can be found in the docket, provides more detail of the cost savings and methodology.

COST AND BENEFITS OF THE FINAL RULE

	Annualized cost savings	
	Discounted at 3%	Discounted at 7%
Costs	\$0	\$0
Benefits (Cost Savings)	143	146
Net Benefits (Benefits—Costs)	143	146

II. Entities Potentially Affected by This Final Rule

Industry sector	NAICS code
Farms	111, 112
Food Manufacturing	311

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 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 entitled **FOR FURTHER INFORMATION CONTACT.**

III. Statutory Authority and Delegation of Authority

Section 311(j)(1)(C) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1321(j)(1)(C), requires the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil to navigable waters or

adjoining shorelines from vessels and facilities and to contain such discharges. The President delegated the authority to regulate non-transportation-related onshore facilities to EPA in Executive Order 11548 (35 FR 11677, July 22, 1970), which was replaced by Executive Order 12777 (56 FR 54757, October 22, 1991). A Memorandum of Understanding (MOU) between the U.S. Department of Transportation (DOT) and EPA (36 FR 24080, November 24, 1971) established the definitions of transportation-related and non-transportation-related facilities. An MOU between EPA, the U.S. Department of the Interior (DOI), and DOT (59 FR 34102, July 1, 1994) re-delegated the responsibility to regulate certain offshore facilities from DOI to EPA.

In 1995, Congress enacted the Edible Oil Regulatory Reform Act (EORRA), 33 U.S.C. 2720, which mandates that

Federal agencies,¹ in issuing or enforcing any regulation or establishing any interpretation or guideline relating to the transportation, storage, discharge, release, emission or disposal of oil, differentiate between and establish separate classes for the various types of oils, specifically: Animal fats and oils and greases, and fish and marine mammal oils; oils of vegetable origin; other non-petroleum oils and greases; and petroleum oils. In differentiating between these classes of oils, Federal agencies are directed to consider differences in the physical, chemical, biological, and other properties, and in the environmental effects of the classes.

IV. Background

EPA promulgated a series of amendments to the SPCC rule in December 2006, December 2008 and November 2009 that provided the

¹ The requirements of the Edible Oil Regulatory Reform Act do not apply to the Food and Drug Administration and the Food Safety and Inspection Service.

facility owner or operator with significant flexibility to comply with the SPCC regulatory requirements. Facilities handling animal fats and vegetable oils (AFVOs), subject to the SPCC rule because of their oil storage capacity, may benefit from a number of these amendments, which tailored prevention and control measures to the facility type and oils being stored. The provisions included streamlined requirements for qualified facilities and reduced requirements for a subset of those qualified facilities. The rule also amended the security, integrity testing, and facility diagram requirements, while exemptions were provided for pesticide application equipment and related mix containers, and for single-family residential heating oil containers. Finally, the amendments offered clarifications for fuel nurse tanks, wind farms and for the definition of "facility."

Milk typically contains a percentage of animal fat, a non-petroleum oil. Thus, containers storing milk and milk products are currently subject to the SPCC rule when they meet the applicability criteria set forth in § 112.1. In the SPCC rule, the term "bulk storage container" is defined at § 112.2 as "any container used to store oil." Therefore, bulk storage containers storing milk are currently subject to the applicable provisions under § 112.12. Additionally, milk is processed in containers during the pasteurization process. These continuous pasteurizers, while not bulk storage containers, are considered oil filled-manufacturing equipment and are currently subject to the general provisions of the SPCC rule under § 112.7. Finally, milk is also handled and transferred through piping and appurtenances associated with containers which are currently subject to certain provisions of the SPCC rule.

In response to EPA's October 2007 proposal for amendments to the SPCC rule (72 FR 58378, October 15, 2007), several comments requested that EPA exempt containers used to store milk from the SPCC requirements. Specifically, these comments suggested that milk storage containers be exempted from the SPCC requirements because the Grade "A" PMO addresses milk storage and tank integrity. The comments identified the PMO, which specifically addresses milk intended for human consumption, as a model ordinance maintained through a cooperative agreement between the States, the Food and Drug Administration (FDA), and the regulated community. States typically adopt the PMO either by reference, or by directly incorporating similar requirements into their statutes or regulations.

Thus, on January 15, 2009, the Agency published a proposal to exempt from SPCC requirements milk containers and associated piping and appurtenances provided they are constructed according to current applicable 3-A Sanitary Standards, and are subject to the current applicable PMO or a State dairy regulatory requirement equivalent to the current applicable PMO [74 FR 2463].

The Agency also requested comment on an exemption for milk product containers and their associated piping and appurtenances from the SPCC rule provided they are constructed in accordance with the current applicable 3-A Sanitary Standards, and are subject to the current applicable Grade "A" PMO sanitation requirements or a State dairy regulatory requirement equivalent to the current applicable PMO. In addition, the Agency requested comment on how to address milk storage containers (including totes) that may not be constructed to 3-A Sanitary Standards under the SPCC rule and whether they should also be exempted from the SPCC requirements, provided they are subject to the current applicable Grade "A" PMO or a State dairy regulatory requirement equivalent to the current applicable PMO. Finally, the Agency requested comment on alternative approaches to address milk and milk product containers, associated piping and appurtenances under the SPCC rule.

After the Agency's review of comments and consideration of all relevant facts, today's rule modifies the proposed exemption to exempt all milk containers, and associated piping and appurtenances and further extends the exemption to include all milk product containers, and associated piping and appurtenances. The Agency is also removing the compliance date requirements for the exempt containers.

V. This Action

A. Finalize Modified Amendments

The Agency is exempting from the SPCC requirements milk and milk product containers, and associated piping and appurtenances. Additionally, the capacity of these exempted containers, and associated piping and appurtenances is not to be included in a facility's total oil storage capacity calculation (see § 112.1(d)(2)(ii)). The Agency is also removing the compliance date requirements for the exempted containers.

This preamble discusses these provisions, and any related comment received during the 2009 comment period, that raised substantive policy

issues. For a complete discussion of the comments received in 2009, see *Comment and Response Document Oil Pollution Prevention; SPCC Plan Requirements—Amendments*, a copy of which is available in the docket for this rulemaking.

1. Industry Sanitary Standards and Construction Requirements

Milk and milk product containers and their associated piping and appurtenances are generally constructed according to an industry standard established by the 3-A Sanitary Standards organization (3-A Sanitary Standards, Inc., McLean, VA, <http://www.3-a.org>) which satisfy the PMO model code construction requirements for milk and milk product containers and associated piping and appurtenances. These containers, associated piping and appurtenances may also be subject to the U.S. Department of Agriculture (USDA) Recommended Requirements for Milk for Manufacturing Purposes and its Production and Processing (*Milk for Manufacturing Purposes and Its Production and Processing; Requirements Recommended for Adoption by State Regulatory Agencies*; see <http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELDEV3004791>). All milk handling operations subject to the PMO are required to have an operating permit, and are subject to inspection by State dairy regulatory agencies. The PMO model code establishes criteria for the permitting, inspection and enforcement of milk handling equipment and operations that govern all processes for milk intended for human consumption.

Likewise, USDA has developed and maintains a set of model regulations relating to quality and sanitation requirements for the production and processing of manufacturing grade milk, which are recommended for adoption and enforcement by the various States that regulate manufacturing grade milk. The purpose of the model requirements is to promote uniformity in State dairy laws and regulations relating to manufacturing grade milk. These recommended requirements contain criteria similar to those of the PMO for milk for manufacturing purposes, including its processing, use, labeling and storage. Furthermore, these requirements include provisions for inspections, certification and licensing of facilities that handle and process milk for manufacturing purposes and its products. These requirements serve as the basis for the exemption of milk and milk product containers, and their associated piping and appurtenances

from the SPCC rule. Milk and milk product containers, associated piping and appurtenances are generally constructed in accordance with standards like the current applicable 3-A Sanitary Standards, and are subject to standards like the current applicable PMO sanitation requirements, USDA Recommended Requirements for Milk for Manufacturing Purposes and its Production and Processing, or equivalent State dairy regulations. The 3-A Sanitary Standards for equipment construction require the use of durable materials and sanitary construction criteria that can be easily maintained and kept clean and free of defects when appropriate cleaning procedures and chemicals are used. Both the PMO sanitation requirements and the USDA Recommended Requirements include construction and sanitation standards and frequent State and/or Federal inspections for these containers, piping and appurtenances, and provide definitions and/or list those milk and milk products to which they apply. State dairy requirements for permits/licenses, operations and inspections are generally structured to be equivalent to the current applicable PMO requirements and/or USDA Recommended Requirements. The Agency believes the combination of these specific standards and requirements address the prevention of oil discharges.

2. Summary of Comments

Support for an Expanded Exemption. There was only one comment to the 2009 proposal, and it expressed general support for the exemption. The comment requested that EPA consider exempting all milk and milk products, including cheese, cream, yogurt and ice cream mix. The comment stated these products and their containers do not present a potential for spills into navigable waters of the United States because the equipment must be constructed to preclude deterioration and must be maintained to keep it clean and free of defects. The comment states that all dairy processing equipment, storage containers, piping and appurtenances are made of high grade stainless steel (with the exception of some cheese storage containers) and are designed and constructed in accordance with 3-A and/or FDA's Current Good Manufacturing Practices (CGMP) or equivalents. The comment also states that other requirements mandate frequent inspection of dairy operations for defects in equipment thereby making spillage and leakage highly improbable.

Exemption of Solid Mixtures. The comment also requested that EPA

exempt cheese and other mixtures that are solid at room temperature from the SPCC requirements. The comment included as an appendix a letter commenting on an earlier Agency action and requested an exemption of substances that are solid at ambient temperatures (including animal fats). The comment also stated that should a cheese production or storage facility catch fire, "under no circumstances would cheese liquefy and flow" out of the facility to potentially pollute or endanger navigable waters of the United States.

Expand the Scope of Regulations and Standards To Qualify the Exemption.

The comment requested that EPA broaden the scope of regulatory requirements and construction standards to exempt additional containers from the SPCC rule, specifically those that are subject to the Food and Drug Administration (FDA) requirements under 21 CFR Part 110. The comment suggested the exemption state: "The SPCC rule does not apply to storage containers and associated piping and appurtenances that contain milk or milk products that are: A) subject to the construction requirements of 3-A Sanitary Standards or the equivalent standards approved by a federal, state or local regulatory authority, and b) are subject to 21 CFR Part 110, the PMO, or a state or local equivalent." Additionally, the comment argued that, along with high sanitation standards for edible fats and oils, regulations issued by the Occupational Safety and Health Administration (OSHA) for worker safety address storage and use of oils at food facilities, thereby reducing the likelihood, rate and magnitude of a spill should an accident occur.

Definition of Oil and Oil Mixtures.

The comment also argued milk and milk products should not be defined as oil. The comment incorporates by reference statements that milk and other dairy products do not seem to meet the definition of "oil" because milk, ice cream mix, yogurt, cream, cheese and other dairy products are not (1) fat, oil or grease or (2) fat, oil or grease mixed with waste. The comment included as an appendix a letter to the Agency commenting on a separate action, stating there are minimal environmental risks resulting from edible fats and oils spills and EPA should exempt substances not listed on the U.S. Coast Guard list of petroleum and non-petroleum oils (e.g., milk or milk products). The comment requests EPA clarify the definition of oil and oil mixtures so that lower fat mixtures, e.g., those below 50 percent fat, or those that are solid at room temperature might not

be considered oil, thereby exempting most milk and milk products from the SPCC requirements. The commenter further requested EPA not initiate any enforcement actions against operations where there is substantial doubt regarding whether substances at those facilities are within the scope of the SPCC rule until EPA has clarified oil mixtures.

3. Response to Comments

Support for an Expanded Exemption.

EPA recognizes the merits to arguments supporting an exemption for milk product containers. Thus, EPA is amending the proposed exemption by exempting all milk containers, and associated piping and appurtenances and by further extending the exemption to include all milk product containers, and associated piping and appurtenances. The exempted containers include all milk and milk product containers as defined in the PMO model code, but also all milk and milk product containers subject to the USDA Recommended Requirements for Milk for Manufacturing Purposes and its Production and Processing. EPA also acknowledges that some milk and milk product handling operations are subject to 21 CFR 110. However, EPA believes that the dairy specific standards above apply to the vast majority of milk and milk product containers. The Agency could not identify any milk or milk product containers that are not subject to PMO, USDA Recommended Requirements for Milk for Manufacturing Purposes and its Production and Processing, or equivalent State dairy regulatory requirements and thus the final rule exempts all milk and milk product containers from the SPCC requirements.

In this final rule, EPA is amending the scope of the exemption by exempting all milk containers, and associated piping and appurtenances and by further expanding the exemption to include all milk product containers, and associated piping and appurtenances. These exempted milk and milk product containers, and associated piping and appurtenances are constructed according to standards like the current applicable 3-A Sanitary Standards, and are subject to standards like the current applicable Grade "A" (PMO), USDA Recommended Requirements for Milk for Manufacturing Purposes and its Production and Processing, or equivalent State dairy regulatory requirements. Because of their operational requirements, particularly for permits/licenses and frequent inspections, the Agency expects the owner or operator of a facility with milk

and milk product containers subject to the 3-A Sanitary Standards, and PMO requirements, USDA Recommended Requirements for Milk for Manufacturing Purposes and its Production and Processing, or equivalent State dairy regulatory requirements, to be in compliance with those provisions in order to maintain their operations. For the purposes of this provision, "equivalent" means a State dairy regulation that includes all the components of the PMO model code and/or the USDA Recommended Requirements. All milk and/or milk product transfer and processing activities are included in the scope of this exemption from the SPCC rule.

Exemption of Solid Mixtures. EPA disagrees that all oils or oil mixtures that are solid at room temperature should, as a general matter, be exempted from the SPCC rule. Vegetable oils and animal fats that are solid at room temperature serve as potent physical contaminants and are more difficult to remove from affected animals than petroleum oil (see 62 FR 54511, October 20, 1997).

The Agency believes that spill prevention for milk and milk products produced for processing and manufacturing (e.g., butter, cheese, dry milk) are appropriately addressed through standards like the PMO model code, the USDA Recommended Requirements for Milk for Manufacturing Purposes and its Production and Processing, or equivalent State dairy regulatory requirements, and thus is extending the exemption to include all milk and milk product containers, associated piping and appurtenances.

To decide whether a facility is subject to the SPCC rule, the owner or operator must first identify whether there is a reasonable expectation of an oil discharge to navigable waters or adjoining shorelines from the facility. The owner or operator of a facility may consider the nature and flow properties of the oils handled at the facility to make this determination (for more information, see Chapter 2 of the *SPCC Guidance for Regional Inspectors*). If there is a reasonable expectation that any oil (in any container) at the facility may impact waters if discharged, then the next step is to determine the aboveground and completely buried storage capacity of all oil located at the facility (except for exempt containers). If the aboveground storage capacity is greater than 1,320 U.S. gallons or the completely buried capacity is greater than 42,000 U.S. gallons, then the facility is subject to the SPCC rule and the owner or operator must develop an

SPCC Plan that describes oil handling operations, spill prevention practices, discharge or drainage controls, and the personnel, equipment and resources at the facility that are used to prevent oil spills from reaching navigable waters or adjoining shorelines. However, if the owner or operator of the facility determines there is not a reasonable expectation of discharge of oil to navigable waters or adjoining shorelines from all oils stored at the facility then the facility is not subject to the SPCC requirements. We recommend that the owner or operator document and date these determinations in the event that EPA challenges the determination following an inspection.

The SPCC rule is primarily a performance-based rule, therefore, the owner or operator may consider the properties of each oil located at the facility to identify measures and procedures to prevent spills from the facility. For example, storage of an oil in solid form inside a building may provide adequate secondary containment. Additionally, many SPCC rule provisions allow for environmentally equivalent alternatives to be used (except for secondary containment) provided they are documented in the Plan and certified by a Professional Engineer (see Chapter 3 of the *SPCC Guidance for Regional Inspectors* for more information).

Expand the Scope of Regulations and Standards To Qualify the Exemption. EPA agrees that the scope of the exemption should apply to all milk and milk product containers because they are subject to a combination of standards like the 3-A Sanitary Standards with either PMO or the USDA requirements or State equivalent dairy regulations. EPA is expanding the exemption because non-PMO milk and milk product containers are subject to standards like the USDA Recommended Requirements for Milk for Manufacturing Purposes and its Production and Processing, or equivalent State dairy regulations. The Agency believes the components of these requirements are comparable to the PMO requirements. Specifically, both PMO and USDA Recommended Requirements have provisions that include permitting/licensing, inspections, construction standards, operations, maintenance, enforcement and other sanitation requirements.

All milk and milk product handling operations subject to the PMO and USDA Recommended Requirements must have an operating permit or license, and are subject to inspection by State dairy regulatory agencies. Both the PMO and the USDA Recommended

Requirements establish criteria for the permitting/licensing, inspection and enforcement of handling equipment and operations that typically govern processes for milk and milk products intended for human consumption and for milk produced for processing and manufacturing products for human consumption. These include, but are not limited to, specifications for the design and construction of milk and milk product handling equipment, equipment sanitation and maintenance procedures, temperature controls, and pasteurization standards. In addition, because many kinds of harmful bacteria can grow rapidly in milk and milk products, and thus, to ensure a proper sanitary environment, standards like both the PMO and the USDA Recommended Requirements require that milk and milk product containers be frequently emptied, cleaned, inspected and sanitized and that records of such events be maintained. Such frequent cleaning and inspection of the containers suggests that any leaks or deterioration of container integrity would be quickly identified. PMO and USDA Recommended Requirements also require inspections of facilities with such milk and milk products handling operations by the State-designated regulatory agency prior to issuing a permit or license, and routine inspections thereafter (for example, at dairy farms covered by PMO at least once every six months) by a State designated regulatory agency. Inspections at these facilities encompass those elements associated with the milk and milk products operation, including the containers, and associated piping and appurtenances. Violations of the permitting or licensing requirements may result in the suspension or revocation of the facility's operating license or permit.

USDA regulations, guidelines and recommended requirements all recognize the unique nature in which milk and milk products are handled and stored in contrast to other oils intended for human consumption. Subpart D—Farm Requirements for Milk for Manufacturing of the USDA Recommended Requirements for Milk for Manufacturing Purposes and its Production and Processing requires that farm bulk tanks meet 3-A Sanitary Standards for construction at the time of installation, that they be installed in accordance with USDA regulations, and that all new utensils and equipment be in compliance with applicable 3-A Sanitary Standards. Furthermore USDA regulation under 7 CFR 58.128(d) requires new or replacement storage

tanks or vats to comply with the appropriate 3-A Sanitary Standards (*i.e.*, Storage Tanks for Milk and Milk Products or Sanitary Standards for Silo-Type Storage Tanks for Milk and Milk Products). According to USDA Guidelines for the Sanitary Design and Fabrication of Dairy Processing Equipment, "Dairy Grading Branch policy fully supports and utilizes established 3-A Sanitary Standards and Accepted Practices." Furthermore the document says "When a USDA-Dairy Grading Branch review is requested of equipment for which there are no 3-A Sanitary Standards or Accepted Practices, USDA will use the general criteria, guidelines, and principles outlined in this document. These criteria, guidelines, and principles are consistent with those utilized by the 3-A Sanitary Standards Committees during the development of standards and accepted practices."

Although OSHA worker safety regulations may apply to facilities with milk or milk product containers, their requirements specifically focus on worker safety and do not address container design or container inspection practices as in the case of the PMO or USDA requirements and the 3-A Sanitary Standards. The FDA requirements under 21 CFR Part 110, are current good manufacturing practices in manufacturing, packing, or holding human food and apply to all foods under FDA jurisdiction; whereas PMO and USDA requirements are specific to milk and milk products. The PMO model code and the USDA Recommended Requirements are specific to milk and milk products and serve to minimize their potential for discharge because they include permitting or licensing of facilities, strict inspection frequencies and enforcement procedures, among others. The monitoring and sanitation standards under PMO and USDA serve in part as spill prevention measures because the frequent cleaning and inspections of the milk and milk product containers, associated piping and appurtenances leads to early identification of equipment failure, and spill detection. Failure to comply with these provisions may lead to a suspension of licenses or permits issued under PMO or USDA.

Definition of Oil and Oil Mixtures. EPA does not agree with the comment that milk is not an oil. Milk and other milk products comprised of animal fats meet both the definition of oil and of non-petroleum oil included in § 112.2 of the rule. EPA has an established record of including animal fats and vegetable oils in planning and spill prevention

requirements (see 40 FR 28849, July 9, 1975; and 62 FR 54509, October 20, 1997). The SPCC rule defines oil as "oil of any kind or in any form, including, but not limited to: Fats, oils, or greases of animal, fish, or marine mammal origin; vegetable oils, including oils from seeds, nuts, fruits, or kernels; and, other oils and greases, including petroleum, fuel oil, sludge, synthetic oils, mineral oils, oil refuse, or oil mixed with wastes other than dredged spoil." (40 CFR 112.2) The rule further defines non-petroleum oil as "oil of any kind that is not petroleum-based, including, but not limited to: Fats, oils, and greases of animal, fish, or marine mammal origin; and vegetable oils, including oils from seeds, nuts, fruits, and kernels." Both definitions qualify the listed examples with the statement "including but not limited to" which indicates that these definitions are not limited by the examples provided.

EPA disagrees with the comment that edible fats and oils pose minimal environmental risks. In a notice published on October 20, 1997 (62 FR 54508), EPA denied a request submitted by various trade associations to treat facilities that handle, store, or transport animal fats and vegetable oils in a manner differently from those facilities that store petroleum-based oils. The petitioners claimed that unlike most if not all other oils, animal fats and vegetable oils are non-toxic, readily biodegradable, not persistent in the environment, and in fact are essential components of human and wildlife diets. EPA agrees with the comment that animal fats and vegetable oils, which are consumed in small amounts, are an essential component of human and wildlife diets. However, large amounts of such oils, when discharged into navigable waters or adjoining shorelines, present significant risks to the environment, including wildlife. In fact, the environmental effects of petroleum and non-petroleum oils, including vegetable oils and animal fats, are similar because of the physical and chemical properties common to both. (See **Federal Register** notice at 62 FR 54508; October 20, 1997 for more information on the environmental effects of oil spills of edible fats and oils.)

EPA acknowledges that the U.S. Coast Guard list of petroleum and non-petroleum oils² does not specifically

² The U.S. Coast Guard List Of Petroleum and Non-petroleum Oils can be found at: <http://homeport.uscg.mil/mycg/portal/ep/contentView.do?contentType=2&channelId=30565&contentId=120944&programId=117833&programPage=%2Fep%2Fprogram%2Feditorial.jsp&pageType=13489>.

list milk or milk products; however, this does not provide an adequate basis to exempt milk or milk products from the SPCC rule, especially since they meet the definition of oil under the SPCC rule. Moreover, the U.S. Coast Guard list only includes examples of oils and is not meant to be all-inclusive. The examples are organized alphabetically into several subgroups, including a group for edible animal and vegetable oils and other oils of animal or vegetable origin (which have historically been considered Clean Water Act (CWA) oils). While milk and milk products are not specifically included on the Coast Guard list, for purposes of SPCC, they fall under the category of edible animal and vegetable oils.

Finally, the Agency did not propose changes to the definitions of oil or oil mixture and therefore defining oil and/or oil mixtures are issues outside the scope of this action. Furthermore, EPA will continue to enforce the Oil Pollution Prevention regulations for oil mixtures. The owner or operator of a SPCC-subject facility should consider the definition of oil included in § 112.2 of the rule and the CWA definition of oil when making determinations on how to address the SPCC requirements.

4. Universe Affected by This Action

The approach in this action addresses the concerns raised by the dairy industry for milk producers (dairies) and milk product facilities subject to the SPCC requirements. In 2009, the National Agricultural Statistics Service (NASS), an agency within the USDA, estimated there were 65,000 operations with one or more milk cows and 1,178 facilities manufacturing one or more dairy products (excluding fluid milk products) in the United States. Most of the 65,000 operations with milk cows produce only fluid milk (subject to the PMO or the USDA Recommended Requirements) and their milk storage containers would be exempted. Manufactured dairy facilities handle milk and milk products subject to standards such as either the PMO or the USDA Recommended Requirements, and all their milk/milk product storage containers are also exempt. Milk or milk product containers not under the PMO or the USDA Recommended Requirements are generally covered by an equivalent State dairy regulation; all these State regulated milk and milk product containers are also exempt. This action exempts the entire universe of milk and milk product containers, and associated piping and appurtenances.

Note that milk and milk product facilities may handle other oils subject

to the SPCC requirements. These facilities either have or are developing SPCC Plans in anticipation of the compliance date, but will not have to account for, or address the exempted containers in their SPCC Plans. Some of these facilities may now be either exempt, or eligible as a qualified facility to self-certify the facility's SPCC Plan. In addition, "micro" processor facilities that process one milk product are expected to manufacture and/or store quantities below the SPCC applicability thresholds for container or aggregate quantities (e.g., 1,000 pounds of cheese per month; self-bottling milk for farm consumption). The container sizes at these facilities are typically below the 55-gallon *de minimis* container size of the SPCC rule and therefore, are unlikely to be subject to SPCC requirements (see *SPCC Guidance for Regional Inspectors* for more information).

B. Removal of Compliance Date for Exempted Containers, Associated Piping and Appurtenances

On October 14, 2010, the Agency delayed the compliance date by which facilities must address milk and milk product containers, associated piping and appurtenances that are constructed according to the current applicable 3-A Sanitary Standards, and subject to the current applicable Grade "A" PMO or a State dairy regulatory requirement equivalent to the current applicable PMO (see 75 FR 63093). The date by which the owner or operator of a facility must comply with the SPCC requirements for these milk and milk product containers was delayed one year from the effective date of a final rule specifically addressing these milk and milk product containers, associated piping and appurtenances, or as specified by a rule that otherwise establishes a compliance date for these facilities. This delay of the compliance date was to provide time for certain facilities to undertake the actions necessary to prepare or amend their SPCC Plans, as well as implement them. Today's action specifically addresses those milk and milk product containers, associated piping and appurtenances for which the delay was established and does so by exempting them from any SPCC regulatory requirements. Thus, a date for the exempted containers to come into compliance with SPCC requirements is no longer necessary. As such, the Agency is removing the regulatory requirement to comply with SPCC for these exempt containers by a date certain. The Agency provided notice of its intent in the October 14, 2010 final rule. The regulatory text is

amended by removing and reserving 112.3(c).

This action does not affect the owner or operator's responsibility to prevent oil discharges, including those of milk or milk products, into navigable waters or adjoining shorelines. These discharges may be subject to other applicable statutes and regulations, including but not limited to Section 311 of the Clean Water Act, 33 U.S.C. 1321.

VI. Statutory and Executive Order Reviews

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

Under section 3(f)(1) of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 18, 2011), this action is an "economically significant regulatory action" because it is likely to have an annual effect on the economy of \$100 million or more. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EOs 12866 and 13563 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in "Regulatory Impact Analysis for the Final Amendment to the Oil Pollution Prevention Regulations to Exempt Certain Milk and Milk Product Containers and Associated Piping and Appurtenances (40 CFR part 112)." A copy of the analysis is available in the docket for this action and the analysis is briefly summarized in section VI-C.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The final rule amendment exempts from the SPCC rule milk and milk product containers, associated piping and appurtenances. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations, 40 CFR part 112, under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

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.

For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) A small business as defined in the U.S. Small Business Administration (SBA)'s regulations at 13 CFR 121.201—SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of dairy farms, which constitute a large percentage of the facilities affected by this final rule, defines small businesses as having less than \$0.75 million per year in sales receipts; (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 final rule on small entities, the Agency certifies that this action will not have a significant economic impact on a substantial number of small entities since the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The impact of concern is any significant, adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the * * * rule on small entities" (5 U.S.C. 603 and 604).

Under this final rule, EPA is exempting from SPCC rule requirements milk and milk product containers, associated piping and appurtenances because they are generally designed, constructed and maintained according to the standards such as the current applicable 3-A Sanitary Standards, and are subject to the standards such as the current applicable Grade "A" PMO, USDA Recommended Requirements for Milk for Manufacturing Purposes and its Production and Processing, or an

equivalent State dairy regulatory requirement. Overall, EPA estimates that this final action will reduce annual compliance costs by approximately \$146 million for owners and operators of affected facilities. Total costs were annualized over a 10-year period using a 7 percent discount rate. To derive this savings estimate, EPA first estimated the number of dairy farms and milk processing facilities that will be affected each year (2010–2019) by the final rule. EPA next analyzed the expected milk and fuel oil storage capacity of dairy farms with varying numbers of cattle based on daily production rate per cow, the storage requirements for milk, and conversations with industry representatives. EPA also estimated the milk/milk product and fuel oil storage capacity of milk processing facilities, and estimated the cost savings associated with the exemption for milk/milk product storage containers at both dairy farms and milk processing facilities. These savings include secondary containment costs, cost savings from preparing and maintaining an SPCC Plan for a smaller facility, and, for Qualified Facilities, preparing only a Plan Template and saving PE certification costs. A certain number of dairy farms are expected to become exempt as a result of the amendments. While the Agency extended the exemption to include milk product containers, piping and appurtenances, it does not have data on the number of milk product containers at milk product manufacturing facilities to determine the overall cost savings for the exemption. Therefore, EPA expects that the total cost savings for the final rule is underestimated.

EPA, therefore, concludes that this final rule will relieve regulatory burden for small entities and certifies that this action will not have a significant economic impact on a substantial number of small entities. EPA requested comment on potential impacts on small entities, but received no comments specific to small entities.

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. 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 impose no enforceable duty on any small government.

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 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 Executive Order 13132. Under the Clean Water Act (CWA) section 311(o), States may impose additional requirements, including more stringent requirements, relating to the prevention of oil discharges to navigable waters or adjoining shorelines. EPA recognizes that some States have more stringent requirements (56 FR 54612, October 22, 1991). This final rule would not preempt State law or regulations. Thus, Executive Order 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). This final rule will not significantly or uniquely affect communities of Indian Tribal governments. Thus, Executive Order 13175 does not apply to this final rule. EPA specifically solicited additional comment on this action from Tribal officials, but none was received.

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

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 final rule is not subject to

Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 18355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The overall effect of the final rule is to decrease the regulatory burden on certain facility owners or operators subject to its provisions.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104–113 (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.

The owner or operator of a facility subject to the SPCC rule has the flexibility to consider applicable industry standards in the development of an SPCC Plan, in accordance with good engineering practice. EPA solicited comments on this aspect of the rulemaking and, specifically, invited the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation. The single comment submitted agreed with the use of the 3–A Sanitary Standards and the PMO model code as a basis for exempting milk and milk product containers, associated piping and appurtenances from the SPCC requirements. However, this rulemaking does not involve technical standards, as it does not set or incorporate by reference any one specific technical standard. Therefore, the NTTAA does not apply.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a "major rule" as defined by 5 U.S.C. 904(2). This rule will be effective June 17, 2011.

List of Subjects in 40 CFR Part 112

Environmental protection, Animal fats and vegetable oils, Farms, Milk, Milk products, Oil pollution, Tanks, Water pollution control, Water resources.

Dated: April 12, 2011.

Lisa P. Jackson,
Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 112 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.

Subpart A—[Amended]

■ 2. Amend § 112.1 by adding paragraphs (d)(2)(ii)(F) and (d)(12) to read as follows:

§ 112.1 General applicability.

* * * * *
(d) * * *
(2) * * *
(ii) * * *

(F) The capacity of any milk and milk product container and associated piping and appurtenances.

* * * * *

(12) Any milk and milk product container and associated piping and appurtenances.

* * * * *

§ 112.3 [Amended]

■ 3. Amend § 112.3 by removing and reserving paragraph (c).

[FR Doc. 2011-9288 Filed 4-15-11; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA-2011-0002; Internal Agency Docket No. FEMA-B-1186]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a

newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Federal Insurance and Mitigation Administrator reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4064, or (e-mail) luis.rodriquez1@dhs.gov.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim rule is categorically excluded from the requirements of 44