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Washington, DC 20548

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May 2, 2011

The Honorable Barbara Boxer
Chairman
The Honorable James M. Inhofe
Ranking Member
Committee on Environment and Public Works
United States Senate

The Honorable John L. Mica
Chairman
The Honorable Nick J. Rahall II
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

Subject: *Environmental Protection Agency: Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Rule--Amendments for Milk and Milk Product Containers*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Environmental Protection Agency (EPA), entitled "Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Rule--Amendments for Milk and Milk Product Containers" (RIN: 2050-AG50). We received the rule on April 18, 2011. It was published in the *Federal Register* as a final rule on April 18, 2011, with an effective date of June 17, 2011. 76 Fed. Reg. 21,652.

The final rule exempts all milk and milk product containers and associated piping and appurtenances from the SPCC requirements. EPA is also removing the compliance date requirements for the exempted containers.

Enclosed is our assessment of EPA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that EPA complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Nicole Owens
Director, Regulatory Management Division
Environmental Protection Agency

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
"OIL POLLUTION PREVENTION; SPILL PREVENTION, CONTROL,
AND COUNTERMEASURE (SPCC) RULE--AMENDMENTS
FOR MILK AND MILK PRODUCT CONTAINERS"
(RIN: 2050-AG50)

(i) Cost-benefit analysis

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 dollars and a 7-percent discount rate). In aggregate, the total annualized savings is estimated at \$146 million. EPA estimated that no costs will be associated with the final rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

EPA 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. According to EPA, a small entity is defined as: (1) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; (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 business as defined in the U.S. Small Business Administration's (SBA) regulations at 13 C.F.R. § 121.201 (SBA defines small businesses by category of business using North American Industry Classification System 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.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

EPA states that 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. EPA notes that the action imposes no enforceable duty on any state, local, or tribal government or the private sector; therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. According to EPA, 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 and the amendments impose no enforceable duty on any small government.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On January 15, 2009, EPA 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 Pasteurized Milk Ordinance (PMO) or a state dairy regulatory requirement equivalent to the current applicable PMO. 74 Fed. Reg. 2463. EPA states that it reviewed comments and considered of all relevant facts in modifying this final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

EPA states that 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 C.F.R. part 112, under the provisions of the PRA. EPA notes that burden is defined at 5 C.F.R. §1320.3(b). EPA explains that 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. EPA states that the OMB control numbers for its regulations in 40 C.F.R. are listed in 40 C.F.R. part 9.

Statutory authorization for the rule

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 11,548 (35 Fed. Reg. 11,677, July 22, 1970), which was replaced by Executive Order 12,777 (56 Fed. Reg. 54,757, October 22, 1991). A Memorandum of Understanding (MOU) between the U.S. Department of Transportation (DOT) and EPA (36 Fed. Reg. 24,080, 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 Fed. Reg. 34,102, 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, 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.

Executive Order No. 12,866 (Regulatory Planning and Review)

EPA states that 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.

Executive Order No. 13,132 (Federalism)

EPA states that this final rule 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 and, therefore, does not have federalism implications.