



ENVIRONMENTAL PROTECTION AGENCY

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40 CFR Part 131

[EPA-HQ-OW-2009-0596; FRL-9637-1]

RIN 2040-AF36

Effective Date for the Water Quality Standards for the State of Florida's Lakes and Flowing Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; delay of effective date.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing an extension of the March 6, 2012 effective date of the “Water Quality Standards for the State of Florida’s Lakes and Flowing Waters; Final Rule” (inland waters rule) for four months to July 6, 2012. EPA’s inland waters rule included an effective date of March 6, 2012 for the entire regulation except for the site-specific alternative criteria provision, which took effect on February 4, 2011. This revision of the effective date for the inland waters rule does not affect or change the February 4, 2011 effective date for the site-specific alternative criteria provision.

DATES: This final rule is effective on **[Insert date of FILING for public inspection at the Federal Register]**. The effective date of § 131.43, revised on December 6, 2010 (75 FR 75805), effective March 6, 2012, is delayed until July 6, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-OW-2011-0466. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information of which disclosure is restricted by statute. Certain other 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 through www.regulations.gov or in hard copy at the EPA Docket Center, EPA West Room 3334, 1301 Constitution Avenue, NW, Washington, DC 20004, Attention: Docket ID No. EPA-HQ-OW-2009-0596. The Office of Water (OW) Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket Center telephone number is 202-566-1744. 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.

FOR FURTHER INFORMATION CONTACT: For information concerning this rulemaking, contact: Tracy Bone, U.S. EPA, Office of Water, Mailcode 4305T, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460; telephone number 202-564-5257; email address: bone.tracy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

Does this Action Apply to Me?

Citizens concerned with water quality in Florida may be interested in this rulemaking. Entities discharging nitrogen or phosphorus to lakes and flowing waters of Florida could be indirectly affected by this rulemaking because water quality standards (WQS) are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Categories and entities that may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to lakes and flowing waters in the State of Florida.
Municipalities	Publicly-owned treatment works discharging pollutants to lakes and flowing waters in the State of Florida.
Stormwater Management Districts	Entities responsible for managing stormwater runoff in Florida.

This table is not intended to be exhaustive, but rather provides a guide for entities that may be directly or indirectly affected by this action. This table lists the types of entities of which EPA is now aware that potentially could be affected by this action. Other types of entities not listed in the table, such as nonpoint source contributors to nitrogen/phosphorus pollution in Florida's waters may be indirectly affected through implementation of Florida's water quality standards program (i.e., through Basin Management Action Plans (BMAPs)). Any parties or entities conducting activities within watersheds of the Florida waters covered by this rule, or who rely on, depend upon, influence, or contribute to the water quality of the lakes and flowing waters of Florida, may be indirectly affected by this rule. To determine whether your facility or activities may be affected by this action, you should carefully examine the language in 40 CFR 131.43, which is the final rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding FOR FURTHER INFORMATION CONTACT section.

II. Background

On December 6, 2010, EPA's final inland waters rule, entitled "Water Quality Standards for the State of Florida's Lakes and Flowing Waters; Final Rule," was published in the **Federal Register** at 75 FR 75762, and codified at 40 CFR 131.43. The final inland waters rule established numeric nutrient criteria in the form of total nitrogen, total phosphorus, nitrate+nitrite, and chlorophyll a for the different types of Florida's inland waters to assure attainment of the State's applicable water quality designated uses. More specifically, the numeric nutrient criteria translated Florida's narrative nutrient provision at Subsection 62–302–530(47)(b), Florida Administrative Code (F.A.C.), into numeric values that apply to lakes and springs throughout Florida and flowing waters outside of the South Florida Region. (EPA has distinguished the South Florida Region as those areas south of Lake Okeechobee and the Caloosahatchee River watershed to the west of Lake Okeechobee and the St. Lucie watershed to the east of Lake Okeechobee.) This final inland waters rule seeks to improve water quality, protect public health and aquatic life, and achieve the long-term recreational uses of Florida's waters, which are a critical part of the State's economy.

III. Revised Effective Date

A. Rationale for Extending the March 6, 2012 Effective Date

As stated in the inland waters rule, 75 FR 75807, the rule was scheduled to take effect on March 6, 2012, except for the site-specific alternative criteria (SSAC) provision at 40 CFR 131.43(e), which took effect on February 4, 2011. As discussed at length in the proposal to this

final rule, 76 FR 79604 and finalized in this action, EPA is extending the effective date of the final inland waters rule four months to July 6, 2012.

The State rulemaking and legislative process is ongoing and its ultimate resolution is uncertain. The Florida Department of Environmental Protection (FDEP) sent the Environmental Review Commission (ERC)-approved rules and amendments to the Florida legislature for ratification during the 2012 regular legislative session. The last day of Florida's 2012 regular legislative session is March 9, 2012. Final State action on Florida numeric nutrient criteria that assure attainment of State water quality designated uses consistent with applicable CWA provisions could affect the need for EPA's criteria for corresponding waters to take effect. Implementation of either the State or Federal criteria could have implications for many interested parties and members of the public in the State.

Extending the effective date of EPA's inland waters rule would avoid the confusion and inefficiency that may occur should Federal criteria become effective while State criteria are being finalized by the State, submitted to EPA, and reviewed by EPA. To this end, EPA proposed a 90-day extension of the March 6, 2012 effective date on December 22, 2012 (76 FR 79604) and requested comment. EPA also requested comment on whether a longer extension should be provided. Based on public comment, and because the State rulemaking process has continued toward FDEP's adoption and submission of new or revised water quality standards to EPA for review pursuant to CWA section 303(c), EPA is extending the March 6, 2012 effective date by four months to July 6, 2012 to allow the State to complete its process.

B. Public Comment

EPA received six comments on the proposed rule. One commenter does not support any delay in the effective date. This commenter says that an extension is inconsistent with EPA's determination that numeric nutrient criteria are necessary for Florida, the Clean Water Act's direction to EPA to act promptly in establishing such criteria following such determination, and a consent decree obligation. EPA disagrees with the commenter. EPA maintains that its determination remains in place and that numeric nutrient criteria for Florida were promptly proposed and promulgated by EPA (75 FR 75762, December 10, 2010), consistent with EPA's determination, the CWA, and the consent decree. This action provides a limited time for the State of Florida to complete its current rulemaking process and to submit any finally adopted water quality standards to EPA for review under the Clean Water Act. As mentioned above, having EPA's criteria take effect while State criteria are being finalized by the State in the near term could cause confusion and administrative inefficiency for the State and regulated entities, something the EPA wants to avoid. Providing this time to allow the State rulemaking process to conclude will avoid such confusion and inefficiency.

The other five commenters support the proposal to extend the effective date, arguing that the additional time would avoid the confusion and inefficiency that may occur should Federal criteria become effective while State criteria are being finalized by the State, and possibly being reviewed by EPA. These commenters supported the proposed extension of the effective date by 90 days. In addition to extending the effective date by 90 days, some of these commenters also proposed that EPA extend the comment period for longer than 90 days; a six-month extension and a seven-month extension were mentioned specifically. EPA agrees that a slightly longer extension is warranted, but that four months is appropriate in order to provide sufficient time to allow the State rulemaking process to come to completion.

Therefore, based on public comment as well as the continued progress by Florida in their water quality standards process, EPA believes that a four-month extension is warranted.

EPA received a comment urging actions related to an EPA rulemaking under development (i.e., not the inland waters rule). These comments are outside the scope of this action and therefore EPA is not addressing them.

C. Good Cause Exemption

Section 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. 553(d)(3), provides that “[t]he required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except ... (3) as otherwise provided by the agency for good cause found and published with the rule.” Today’s final rule is a rule that relieves a restriction, i.e., that delays the effective date of a Federal rule. Today’s rule does not establish any requirements but rather merely extends the effective date of already-promulgated requirements. On this basis, EPA has determined that there is “good cause” for having this rule take effect upon **[Insert date of FILING for public inspection at the Federal Register]** . EPA thus finds that this constitutes “good cause” under 5 U.S.C. 553(d)(3).

IV. Statutory and Executive Order Reviews

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

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), since it merely extends the effective date of an already promulgated rule, and is therefore not subject to review under Executive Order 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This action does not impose any information collection burden, reporting or record keeping requirements on anyone.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have 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 action on small entities, small entity is defined as: (1) A small business as defined by 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 which is independently owned and operated and is not dominant in its field.

This final rule does not establish any requirements that are applicable to small entities, but rather merely extends the date of already promulgated requirements. Thus, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

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 the 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 the 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 cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of 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 the 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.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. This final rule does not regulate or affect any entity and, therefore, is not subject to the requirements of sections 202 and 205 of UMRA.

E. Executive Order 13132 (Federalism)

This action does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely extends the effective date of an already promulgated regulation.

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

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with Tribal officials early in the process of developing the proposed regulation and develops a Tribal summary impact statement. However, the rule will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law.

In the State of Florida, there are two Indian Tribes, the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida, with lakes and flowing waters. Both Tribes have been approved for treatment in the same manner as a State (TAS) status for CWA sections 303 and 401 and have federally-approved WQS in their respective jurisdictions. These Tribes are not subject to this final rule. This rule will not impact the Tribes because it merely extends the date of already promulgated requirements.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866 and because the Agency does not believe this action includes environmental health risks or safety risks that would present a risk to children.

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

This action is not subject to Executive Order 13211 (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 No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards

(e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order (E.O.) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs 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. This action is not subject to E.O. 12898 because this action merely extends the effective date for already promulgated requirements.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the

rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of **[Insert date of FILING for public inspection at the Federal Register]**. 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*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 131

Environmental protection, Water quality standards, Nitrogen/phosphorus pollution, Nutrients, Florida.

Dated: February 16, 2012.

Lisa P. Jackson,
Administrator.

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