



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 435

[EPA-HQ-OW-2016-0598; FRL-9953-26-OW]

[RIN 2040-AF68]

Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source

Category – Implementation Date Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to extend the implementation deadline for certain facilities subject to the final rule establishing pretreatment standards under the Clean Water Act (CWA) for discharges of pollutants into publicly owned treatment works (POTWs) from onshore unconventional oil and gas (UOG) extraction facilities (81 FR 41845; June 28, 2016). EPA is making this revision in response to new information suggesting that there are likely facilities subject to the final rule not presently meeting the zero discharge requirements in the final rule.

DATES: This direct final rule is effective on **[Insert date 60 days after date of publication in the Federal Register]** without further notice, unless EPA receives adverse comment by **[Insert date 30 days after date of publication in the Federal Register]**. If EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that the direct final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. **[EPA-HQ-OW-2016-0598]**, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions

(audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: For more information, see EPA’s website:

<https://www.epa.gov/eg/unconventional-oil-and-gas-extraction-effluent-guidelines>. For technical information, contact Karen Milam, Engineering and Analysis Division (4303T), Office of Water, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone: 202-566-1915; e-mail: milam.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply to Me?

Entities potentially regulated by this final action include:

Category	Example of Regulated Entity	North American Industry Classification System (NAICS) Code
Industry	Crude Petroleum and Natural Gas Extraction	211111
Industry	Natural Gas Liquid Extraction	211112

II. Why is EPA Issuing a Direct Final Rule?

EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. This direct final rule merely extends the implementation deadline for existing onshore UOG extraction facilities that were discharging to POTWs on or between the date of the Federal Register Notice of the proposed rule (April 7, 2015) and the date of the Federal Register Notice of the final rule (June 28, 2016) to the default three year period provided in the

General Pretreatment Regulations. This direct final rule does not otherwise amend the final pretreatment standards rule in any way. In the “Proposed Rules” section of today’s Federal Register, however, we are publishing a separate document that will serve as the proposed rule to extend the implementation date if we receive adverse comments on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this direct final rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

III. Supplementary Information

A. Background

EPA promulgated revisions to Effluent Guidelines and Standards for the Oil and Gas Extraction Point Source Category which established pretreatment standards for onshore unconventional oil and gas extraction facilities (81 FR 41845, June 28, 2016). In this final rule, EPA established pretreatment standards prohibiting the discharge of pollutants in UOG extraction wastewater to POTWs, and established an effective date of August 29, 2016. In the preamble to the final rule, EPA indicated that because UOG facilities were currently meeting this zero discharge requirement, the implementation deadline for these pretreatment standards would be the same as the effective date of the final rule. After promulgation of the final rule, EPA received two letters indicating that there are likely facilities discharging UOG wastewater to POTWs; this is new information to EPA.

B. Description of EPA’s action

Based on this post-promulgation information submitted to EPA suggesting that there are likely facilities subject to the final pretreatment standards rule that are currently discharging UOG wastewater to POTWs, EPA is extending the implementation deadline for existing sources that were lawfully

discharging to POTWs on or between April 7, 2015 and June 28, 2016 to three years from the effective date of the rule – to August 29th, 2019. This direct final rule does not change the compliance date for all other facilities subject to the final onshore UOG extraction pretreatment standards rule. The final pretreatment standards did not specify a compliance date in the regulatory text; rather, EPA included a compliance date equal to the effective date of the rule in the preamble to the rule, based on the Agency’s record indicating that no facilities were discharging UOG wastewater to POTWs. Because of post-promulgation information indicating that some facilities are likely discharging UOG wastewater to POTWs, EPA is extending the compliance date for these facilities. EPA notes that specifying a compliance date of three years from the effective date of the final pretreatment standards rule is consistent with EPA’s General Pretreatment Regulations, which require existing sources to meet categorical pretreatment standards within three years of the effective date of such standards, unless a shorter compliance time is specified therein. 40 CFR 403.6(b). For purposes of this direct final rule, compliance date and implementation date are used interchangeably.

EPA will not consider any comment submitted on the direct final rule published today on any topic other than the appropriateness of an extension of the compliance date; any other comments will be considered to be outside the scope of this rulemaking.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this action is not a “significant regulatory action” and is therefore not subject to OMB review. With respect to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), this action will not have a significant economic impact on a substantial number of small entities – as this direct final relieves regulatory burden by extending the compliance date for any business (including small businesses) that were discharging UOG wastewater to POTWs at the time of issuance of the pretreatment standard. For the Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104-4), this action

does not significantly or uniquely affect small governments. The action imposes no incremental enforceable duty on any state, local or tribal governments or the private sector. This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; 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.

Congressional Review Act

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 435

Environmental protection, Pretreatment, Waste treatment and disposal, Water pollution control,
Unconventional oil and gas extraction.

Dated: September 22, 2016.

Gina McCarthy,
Administrator.

Therefore, 40 CFR part 435 is amended as follows:

PART 435—OIL AND GAS EXTRACTION POINT SOURCE CATEGORY

1. The authority citation for part 435 continues to read as follows:

Authority: 33 U.S.C. 1251, 1311, 1314, 1316, 1317, 1318, 1342 and 1361.

Subpart C—Onshore Subcategory

2. Add paragraph (a)(3) to § 435.33 to read as follows:

§ 435.33 Pretreatment standards for existing sources (PSES).

(a) * * *

(3) *Compliance deadline for existing sources.* Existing sources lawfully discharging into publicly owned treatment works on or between April 7, 2015 and June 28, 2016 shall comply with the PSES by August 29, 2019. All other existing sources shall comply by August 29, 2016.

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[FR Doc. 2016-23456 Filed: 9/29/2016 8:45 am; Publication Date: 9/30/2016]