



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 435

[EPA-HQ-OW-2014-0598; FRL-9956-05-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: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking 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.

DATES: The final rule is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. In accordance with 40 CFR part 23, this regulation shall be considered issued for purposes of judicial review at 1 p.m. Eastern time on **[INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Under section 509(b)(1) of the CWA, judicial review of this regulation can be had only by filing a petition for review in the U.S. Court of Appeals within 120 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2), the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OW-2014-0598. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., CBI or other

information whose 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. This material can be viewed at the Water Docket in the EPA Docket Center, EPA/DC, EPA West William Jefferson Clinton Bldg., 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 for the Public Reading room is 202-566-1744, and the telephone number for the Water Docket is 202-566-2426. Publicly available docket materials are available electronically through <http://www.regulations.gov>. A detailed record index, organized by subject, is available on EPA's website at <https://www.epa.gov/eg/unconventional-oil-and-gas-extraction-effluent-guidelines>.

FOR FURTHER INFORMATION CONTACT: For more information, see the 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. Supplementary Information

A. Background

The EPA promulgated revisions to the Effluent Guidelines and Standards for the Oil and Gas Extraction Point Source Category which established pretreatment standards for onshore UOG extraction

facilities (81 FR, 41845, June 28, 2016). This final pretreatment standards rule prohibited 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 pretreatment standards rule, the 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, the EPA received two letters indicating that there are likely facilities discharging UOG wastewater to POTWs; this was new information to the EPA.

In light of this post-promulgation information, on September 30, 2016 (81 FR 67266, September 30, 2016), the EPA published a proposed rule to extend the compliance date to August 29, 2019, for existing sources that were lawfully discharging UOG wastewater to POTWs on or between the date of the Federal Register Notice of the proposed UOG pretreatment standards rule (80 FR 18557, April 17, 2015) and the date of the Federal Register action of the final UOG pretreatment standards rule (81 FR 41845, June 28, 2016). For purposes of this final rule, compliance date and implementation date are used interchangeably.

B. Description of EPA's action

Based on the post-promulgation information submitted to the EPA suggesting that there are likely facilities subject to the final UOG pretreatment standards rule that are currently discharging UOG wastewater to POTWs, the EPA is extending the compliance date 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 29, 2019. This final rule does not change the compliance date for all other facilities subject to the final onshore UOG extraction pretreatment standards rule.

C. Response to Comments

Comments received in response to the proposed rulemaking supported the extension of the compliance date for these facilities. The EPA did not receive any comments that opposed or otherwise

questioned the appropriateness of the extension of the compliance date. The EPA did, however, receive comments regarding the applicability of the underlying pretreatment standards rule. Specifically, these comments disagreed with the definition of “unconventional” in the final UOG rule, arguing that the definition was “overly broad” or “arbitrary,” and suggested alternative definitions of “unconventional” that may exclude certain operators in Pennsylvania that have been sending their wastewater to POTWs. These comments are outside the scope of the proposed rule, which was specifically limited to the extension of the compliance date. *See* 81 FR 67267; September, 30, 2016 (“EPA will not consider any comment submitted on the proposed rule published today on any topic other than the appropriateness of an extension of the compliance date; any other comments will be considered outside the scope of this rulemaking.”). As clarified in the preamble to the proposed rulemaking, the rule simply extends the implementation deadline for certain facilities subject to the underlying final UOG pretreatment standard rule and does not otherwise amend the final pretreatment standards rule in any way. *See* 81 FR 67266, 67267; September 30, 2016 (incorporating rationale set forth in direct final rule at 81 FR 67191, 67192; September 30, 2016). Therefore, the EPA maintains that comments regarding the applicability of the underlying pretreatment standards rule are outside the scope of the proposed rule. Any such challenges were required to be raised with respect to the underlying pretreatment standards rule, and not with this final rule, which is limited to the extension of the compliance date.

The EPA’s extension of the compliance date by three years is reasonable, as acknowledged by industry commenters on the direct final rule. *See, e.g.*, Comments from Pennsylvania Independent Oil and Gas Association (finding the three year extension to be “a reasonable, measured and appropriate accommodation.”). As noted in the proposed rule, this is consistent with the 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). Although commenters expressed generalized concerns about adverse impacts on facilities that

have been sending UOG wastewater to POTWs, these generalized concerns are not sufficient to undermine the reasonableness of a three year timeframe for these facilities to meet the pretreatment standard – particularly when the rulemaking record for the EPA’s final UOG pretreatment standard rule demonstrates that other similarly-situated operators are currently meeting the zero discharge pretreatment standard today. EPA did not receive any comments or data attempting to explain why the facilities subject to this final rule would need longer than three years in order to meet the requirements that are currently being met by the vast majority of the industry.

III. 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 businesses (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, Unconventional oil and gas extraction, Waste treatment and disposal, Water pollution control.

Dated: November 28, 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. Amend § 435.33 by adding paragraph (a)(3) to read as follows:

§ 435.33 Pretreatment standards for existing sources (PSES).

(a) ***

(3) *Compliance deadline for existing sources.* Existing sources 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.

[FR Doc. 2016-29338 Filed: 12/6/2016 8:45 am; Publication Date: 12/7/2016]