

the Executive Order. This action does not impose any new requirements and does not impose costs or impacts on the regulated industry and thus does not meet the requirements for Executive Order 12866 review. This action is not subject to the Regulatory Flexibility Act (RFA) since this rule is exempt from notice and comment rulemaking requirements for good cause which is explained in section I. Additionally, this rule will not significantly or uniquely affect small governments. EPA has determined that this rule would not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, this rule is not subject to sections 202, 203, or 205 of the Unfunded Mandates Reform Act of 1999 (Pub. L. 104-4). In addition, the EPA has determined that this action does not have Tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999) because it does not establish any requirements on State or local governments. This regulation is not subject to Executive Order 13045 because it is not economically significant as defined under Executive Order 12866, and because the Agency does not have reason to believe the environmental health and safety risks addressed by this action present a disproportionate risk to children. This action is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. 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. This action does not impose any new information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The existing Information Collection requirements in this regulation were approved by the Office of Management and Budget under OMB control number 2040-0257.

#### List of Subjects

##### 40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Indians-lands, Intergovernmental relations, Penalties,

Reporting and recordkeeping requirements, Water pollution control.

##### 40 CFR Part 125

Environmental protection, Cooling water intake structure, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: July 2, 2007.

**Stephen L. Johnson,**  
Administrator.

■ For the reasons set forth in the preamble, EPA is amending 40 CFR parts 122 and 125 as follows:

#### **PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

■ 1. The authority citation for part 122 continues to read as follows:

**Authority:** The Clean Water Act, 33 U.S.C. 1251 et seq.

##### **§ 122.21 [Amended]**

■ 2. Section 122.21 (r)(1)(ii) is suspended.

■ 3. Section 122.21(r)(5) is suspended.

#### **PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

■ 4. The authority citation for part 125 continues to read as follows:

**Authority:** Clean Water Act, 33 U.S.C. 1251 et seq. unless otherwise noted.

##### **§ 125.90 [Amended]**

■ 5. Section 125.90(a), (c) and (d) are suspended.

■ 6. Sections 125.91 through 125.99 are suspended.

[FR Doc. E7-13202 Filed 7-6-07; 8:45 am]

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#### **ENVIRONMENTAL PROTECTION AGENCY**

##### **40 CFR Part 131**

**[EPA-HQ-OW-2007-0467; FRL-8337-2]**

**RIN NA2040**

#### **Withdrawal of Federal Marine Aquatic Life Water Quality Criteria for Toxic Pollutants Applicable to Washington State**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is proposing to amend the Federal regulations to withdraw its

1992 federally promulgated marine copper and cyanide chronic aquatic life water quality criteria for Washington State, thereby enabling Washington to implement its current EPA-approved chronic numeric criteria for copper and cyanide that cover all marine waters of the State.

In 1992, EPA promulgated Federal regulations establishing water quality criteria for priority toxic pollutants for 12 States, including Washington, and two Territories that had not fully complied with the Clean Water Act (CWA). These regulations are known as the "National Toxics Rule" or "NTR." On November 18, 1997, Washington adopted revised chronic marine aquatic life criteria for copper and cyanide, the only two marine aquatic life priority toxic pollutants in the NTR applicable to Washington. These revisions included a chronic marine aquatic life water quality criterion for copper for all marine waters and a chronic site-specific cyanide criterion for the Puget Sound. EPA approved these criteria on February 6, 1998. On August 1, 2003, Washington adopted revisions to its water quality standards, including a chronic marine criterion for cyanide for all marine waters except the Puget Sound. EPA approved this criterion on May 23, 2007. Since Washington now has marine copper and cyanide chronic aquatic life criteria effective under the CWA that EPA has approved as protective of Washington's designated uses, EPA is proposing to amend the NTR to withdraw the federally promulgated criteria.

**DATES:** This rule is effective on September 7, 2007 without further notice, unless EPA receives adverse comment by August 8, 2007. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule, or the relevant provisions of this rule, will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OW-2007-0467, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the on-line instructions for submitting comments.

- E-mail: [ow-docket@epa.gov](mailto:ow-docket@epa.gov).

- Mail to either: Water Docket, USEPA, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460 or Becky Lindgren, Washington Marine Aquatic Life NTR Removal, U.S. EPA, Region 10, OWW-131, 1200 Sixth Avenue, Seattle, WA 98101, Attention Docket ID No. EPA-HQ-OW-2007-0467.

• Hand Delivery: EPA Docket Center, EPA West Room 3334, 1301 Constitution Ave., NW., Washington, DC, 20004 or Becky Lindgren, Washington Marine Aquatic Life NTR Removal, 1200 Sixth Avenue, Seattle, WA 98101, Attention Docket ID No. EPA-HQ-OW-2007-0467. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OW-2007-0467. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. 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, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at two Docket Facilities. The OW Docket Center is open from 8:30 a.m. until 4:30

p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566-2426 and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC, 20004. 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. Publicly available docket materials are also available in hard copy at U.S. EPA, 1200 Sixth Avenue, Seattle, WA 98101. Docket materials can be accessed from 9 a.m. until 3 p.m., Monday through Friday, excluding legal holidays. The telephone number is (206) 553-0775.

**FOR FURTHER INFORMATION CONTACT:** Becky Lindgren, U.S. EPA, Region 10, 1200 Sixth Avenue, Seattle, WA 98101 (telephone: 206-553-1774 or e-mail: [lindgren.becky@epa.gov](mailto:lindgren.becky@epa.gov)) or Claudia Fabiano, U.S. EPA Headquarters, Office of Science and Technology, 1200 Pennsylvania Avenue, NW., Mail Code 4305T, Washington, DC 20460 (telephone: 202-566-0446 or e-mail: [fabiano.claudia@epa.gov](mailto:fabiano.claudia@epa.gov)).

**SUPPLEMENTARY INFORMATION:** This section is organized as follows:

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K. Congressional Review Act

## I. Why Is EPA Using a Direct Final Rule?

EPA is publishing this rule without a prior proposed rule because the Agency views this action as noncontroversial and anticipates no adverse comment. Because the public had the opportunity to comment on Washington State's adoption of marine copper and cyanide aquatic life criteria, EPA does not anticipate any adverse comments on the withdrawal of Washington from the NTR, located at 40 CFR 131.36 (57 FR 60848), for those criteria. For this reason, EPA is taking this action in a direct final rule. However, in the "Proposed Rules" section of the **Federal Register**, EPA is publishing a separate notice that will serve as a parallel proposed rule to withdraw the same Federal marine aquatic life water quality criteria for toxic pollutants applicable to Washington in the event that adverse comments are received on all or distinct provisions of this direct final rule.

If EPA receives any adverse comment regarding any or all provisions of this direct final rule, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule, or the relevant provisions of this direct final rule, will not take effect. In that event, EPA would address all public comments in any subsequent final rule based on the parallel proposed rule. Any provisions of this direct final rule that are not timely withdrawn by EPA will become effective on September 7, 2007, notwithstanding adverse comment on any other provision. EPA will not institute a second comment period on this direct final rule. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

## II. General Information

### A. What Entities May Be Affected by This Action?

This direct final rule, if made final, will withdraw federally promulgated marine copper and cyanide aquatic life water quality criteria for waters in Washington State. Entities discharging copper or cyanide pollutants to the marine surface waters of Washington could be affected by this rulemaking since water quality standards are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits, CWA section 404 dredge and fill permits, and other activities requiring CWA section 401 certification.

Categories and entities that may ultimately be affected include:

Category	Examples of potentially affected entities
Industry .....	Industries discharging pollutants to surface waters in Washington State.
Municipalities .....	Discharges from publicly-owned facilities such as publicly-owned treatment works and water filtration facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES-regulated entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by this action, you should carefully examine today's proposed rule. If you have questions regarding the applicability of this action to the particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.

- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

### III. Background

#### *A. What Are the Applicable Federal Statutory and Regulatory Requirements?*

In 1992, EPA promulgated a final rule (known as the "National Toxics Rule", or "NTR") to establish numeric water quality criteria for toxic pollutants for 12 States and two Territories (hereinafter referred to as "States") that had failed to comply fully with section 303(c)(2)(B) of the Clean Water Act ("CWA") (57 FR 60848, 60910, December 22, 1992). Section 303(c)(2)(B) required States to adopt numeric water quality criteria for those priority toxic pollutants for which EPA had published recommended water quality criteria pursuant to Section 304(a) of the Act. The criteria that EPA promulgated in the NTR were based on EPA's then current Section 304(a) recommended water quality criteria. The NTR criteria are codified at 40 CFR 131.36 and became the applicable water quality criteria in those 14 States for CWA purposes on February 5, 1993.

As described in the preamble to the final NTR, when a State adopts, and EPA approves, numeric water quality criteria, thus meeting the requirements of section 303(c)(2)(B) of the CWA, EPA will issue a rule amending the NTR to withdraw the Federal criteria for that State. See 57 FR 60860. If the State's criteria are no less stringent than the promulgated Federal criteria, EPA will withdraw its criteria without notice and comment because additional comment on the criteria is unnecessary. However, if a State adopts criteria that are less stringent than the federally promulgated criteria, but that in the Agency's judgment fully meet the requirements of the Act, EPA will provide an opportunity for public comment before

withdrawing the federally promulgated criteria. See 57 FR 60860.

#### *B. Why Is EPA Withdrawing Federal Marine Aquatic Life Water Quality Criteria for Toxic Pollutants Applicable to Washington?*

On November 18, 1997, Washington adopted revisions to its surface water quality standards. Washington adopted a chronic marine aquatic life water quality criterion for copper for all marine waters and a chronic site-specific cyanide criterion for the Puget Sound. EPA Region 10 approved these criteria on February 6, 1998, finding that they were consistent with the CWA and EPA's implementing regulations at 40 CFR part 131. On August 1, 2003, Washington adopted revisions to its water quality standards, including a revised chronic cyanide criterion for all marine waters except the Puget Sound. EPA Region 10 approved this revised criterion on May 23, 2007, finding that it was consistent with the CWA and EPA's implementing regulations at 40 CFR part 131. By adopting chronic numeric criteria for copper and cyanide that are applicable to all marine waters of the State, Washington has complied with the requirements of section 303(c)(2)(B) of the CWA, which requires that states adopt numeric criteria for toxic pollutants for which EPA has published recommended water quality criteria and the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. This fact, plus EPA's approval of Washington's numeric criteria as protective of designated uses, makes the federally promulgated criteria no longer necessary for compliance with the CWA. Therefore, EPA has determined that the federally promulgated criteria are no longer needed and is proposing to withdraw the federally promulgated criteria for Washington.

#### *C. What Are the Federal Marine Aquatic Life Water Quality Criteria for Toxic Pollutants Applicable to Washington That EPA Is Withdrawing?*

In this action, EPA is withdrawing Washington from the NTR for those

marine cyanide and copper chronic criteria that the State has adopted and EPA has approved. Table 1 provides a summary of the marine copper and cyanide chronic aquatic life values under the NTR, Washington's 1997 criteria, and EPA's current recommended 304(a) criteria.

#### 1. Chronic Marine Aquatic Life Criterion for Cyanide Applicable to All Waters Except Puget Sound

Washington has adopted, and EPA has approved, a marine aquatic life criterion for cyanide of 1 microgram per liter ( $\mu\text{g/l}$ ) chronic applicable to all marine waters except the Puget Sound. This criterion is identical to the federally promulgated cyanide criterion in the NTR, which is 1  $\mu\text{g/l}$  for the chronic value. This criterion is also identical to EPA's Section 304(a) recommended water quality criterion. Because Washington's criterion is identical to, i.e., no less stringent than, the federally promulgated criterion in the NTR, the Federal criterion is no longer necessary for compliance with the CWA, and EPA is withdrawing it with this action. See 57 FR 60860.

#### 2. Chronic Marine Aquatic Life Criterion for Cyanide Applicable to Puget Sound

Washington has adopted and EPA has approved a chronic site-specific marine aquatic life criterion for cyanide. The chronic site-specific cyanide criterion is 2.8  $\mu\text{g/l}$  and is only applicable to the waters within the borders of Puget Sound (the waters east of a line from Point Roberts to Lawrence Point to Green Point to Deception Pass, and south from Deception Pass and of a line from Partridge Point to Point Wilson). This value is less stringent than the cyanide value promulgated in the NTR and less stringent than the value listed as part of EPA's current recommended CWA section 304(a) criteria. Despite this fact, EPA worked closely with Washington in developing the chronic site-specific cyanide criterion, reviewing the test methodology and resulting data, and approved the criterion on February 6, 1998. See EPA Region 10 approval of Washington State's site-specific criteria for the Puget Sound, February 6, 1998.

The Federal water quality standards regulation at 40 CFR 131.11 requires states to adopt water quality criteria protective of applicable designated uses. Section 131.11(b)(1) states that states should, in adopting criteria, establish numerical values based on Section 304(a) Guidance, Section 304(a) Guidance modified to reflect site-specific conditions, or other scientifically defensible methods.

Regarding cyanide, Washington established site-specific chronic numeric criterion based on EPA's CWA section 304(a) Guidance modified to reflect site-specific conditions in the Puget Sound, which EPA approved on February 6, 1998.

Site-specific criteria, as with all water quality criteria, must be based on a sound scientific rationale and ensure protection of the applicable designated use. Washington's site-specific marine cyanide criterion for Puget Sound was based on modifying EPA's methodology for deriving aquatic life criteria by using species found in Puget Sound. In developing the site-specific criteria for Puget Sound, Washington substituted toxicity information from all species in the Cancer genus found within Puget Sound for the toxicity data representing an exclusively east coast species of crab (*Cancer irroratus*). In reviewing the methodology utilized by Washington in performing this substitution, EPA found that it was scientifically defensible because it used the same scientific methodology followed in the development of EPA's own section 304(a) recommended chronic criteria for cyanide, and because the methodology Washington used in developing the site-specific criterion used all the same genus that were recommended in EPA's *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses* (EPA, 1985, PB85-227049). Therefore, as described in EPA's February 6, 1998 approval letter, EPA approved the State's site-specific criterion based on EPA's conclusion that these criterion were scientifically defensible, as well as protective of aquatic life in the Puget Sound.

Consequently, Washington now has a chronic marine aquatic life water quality criterion for cyanide that meets the requirements of the statute and federal regulation. As such, the deficiencies leading to EPA's promulgation of this criterion in the NTR for the State have been remedied and the federal regulatory provisions applying this criterion to the Puget Sound in Washington is no longer needed for compliance with the CWA.

#### 3. Chronic Marine Aquatic Life Criterion for Copper Applicable to All Waters

Washington has adopted, and EPA has approved, marine aquatic life criterion for copper of 3.1  $\mu\text{g/l}$  chronic. The value promulgated in the NTR for the copper chronic criterion is 2.4  $\mu\text{g/l}$ . The Washington State criterion for copper is, therefore, less stringent than the value promulgated in the NTR. However, Washington's criterion for

copper is equal to EPA's most recent CWA section 304(a) recommended criterion for the protection of aquatic life for copper, which EPA updated in 1995.

EPA derived the section 304(a) recommended chronic criterion for the protection of aquatic life for copper using up-to-date scientific information. Under CWA section 304(a), EPA periodically publishes updated ambient water quality criteria recommendations to reflect the latest data and scientific information about the relationship between pollutant concentrations and environmental and human health effects. EPA's national recommended water quality criteria serve as guidance to states and authorized tribes in adopting water quality standards under the CWA. After December 1992, when EPA promulgated a copper criterion for Washington as part of the NTR using the Agency's then current section 304(a) criteria recommendations, new data on the toxicity of copper to aquatic organisms in marine waters became available. Thus, EPA updated its national CWA section 304(a) recommended chronic marine aquatic life criterion for copper in 1995 to reflect this new scientific data. On November 18, 1997, Washington State adopted a marine copper aquatic life criterion equivalent to EPA's revised CWA section 304(a) recommended marine copper chronic aquatic life criteria. Washington did this in order to incorporate the latest scientific knowledge into its State water quality standards.

EPA also relies on its section 304(a) recommended water quality criteria when EPA promulgates water quality standards for a State. EPA did this in 2000 when it promulgated acute and chronic criteria for copper in California. Those water quality standards were based on EPA's updated 1995 recommended water quality criteria for copper. See 40 CFR 131.38.

As described in EPA's February 6, 1998 approval, Washington State's chronic marine aquatic life criterion for copper met the requirements of 40 CFR 131.11, which provides that states may adopt criteria based on EPA's CWA section 304(a) recommended criteria. Based on the science supporting EPA's recommended water quality criteria, EPA concluded that Washington's chronic marine aquatic life criterion for copper is protective of the applicable aquatic life designated uses. While Washington's chronic marine aquatic life criterion for copper is less stringent than the corresponding value in the NTR, in its February 6, 1998 approval, EPA concluded that Washington's

chronic marine aquatic life water quality criterion for copper is protective of Washington's designated uses and meets the requirements of the CWA and federal regulation. As such, the

deficiencies leading to EPA's promulgation of this criterion in the NTR for the State have been remedied and the federal regulatory provisions applying this criterion to the Puget

Sound in Washington is no longer needed. Therefore, EPA is removing Washington from the NTR for chronic marine copper aquatic life criterion with this action.

TABLE 1.—SUMMARY OF MARINE CHRONIC COPPER AND CYANIDE AQUATIC LIFE CRITERIA

Chemical	1992 NTR values (Chronic (µg/L))	1997 Revised Wash- ington values (Chronic (µg/L))	EPA's current rec- ommended 304(a) cri- teria (Chronic (µg/L))
Copper .....	2.4	3.1	3.1
Cyanide .....	1	1*	1

\* The Puget Sound site-specific criterion is 2.8 µg/L chronic and is applicable only to waters which are east of a line from Point Roberts to Lawrence Point to Green Point to Deception Pass and south from Deception Pass and of a line from Partridge Point to Point Wilson (these are the borders of Puget Sound).

#### IV. Statutory and Executive Order Reviews

##### A. Executive Order 12866 (Regulatory Planning and Review)

This action withdraws Federal requirements applicable to Washington and imposes no regulatory requirements or costs on any person or entity, does not interfere with the action or planned action of another agency, and does not have any budgetary impacts or raise novel legal or policy issues. Thus, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to OMB review.

##### B. Paperwork Reduction Act

This action does not impose any new information collection burden because it is administratively withdrawing Federal requirements that are no longer needed in Washington. It does not include any information collection, reporting or recordkeeping requirements. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR part 131 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040-0049, EPA ICR number 1530.12. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology

and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 (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 rule imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this action 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 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 rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Tribal, or local governments or the private sector because it imposes no enforceable duty on any of these entities. Thus, this rule is not subject to the requirements of UMRA sections 202 and 205 for a written statement and small government agency plan. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA section 203.

#### *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 rule imposes no regulatory requirements or costs on any State or local governments, therefore, it does not have federalism implications under Executive Order 13132.

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

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This rule imposes no regulatory requirements or costs on any Tribal government. It does not have substantial direct effects on Tribal governments, 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 in Executive Order 13175.

#### *G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)*

Executive Order 13045: “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not economically significant and EPA has no reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

#### *H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)*

This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 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. The 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 is not considering 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 12898 (59 FR 7629, February 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 rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because (1) since Washington’s criteria apply to all marine waters in the State, EPA does not believe that this action would disproportionately affect any one group over another, and (2) EPA has previously determined, based on the most current science and EPA’s CWA section 304(a) recommended criteria, that Washington’s State-adopted and EPA-approved criteria are protective of human health and aquatic life.

#### *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 not a “major rule” as defined by 5 U.S.C. 804(2) and will be effective on September 7, 2007.

#### **List of Subjects in 40 CFR Part 131**

Environmental protection, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: July 2, 2007.

**Stephen L. Johnson,**  
Administrator.

■ For the reasons set forth in the preamble, 40 CFR part 131 is amended as follows:

## PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

**Authority:** 33 U.S.C. 1251 *et seq.*

### § 131.36 [Amended]

■ 2. Section 131.36 is amended by revising the table in paragraph (d)(14)(ii) to read as follows:

### § 131.36 Toxic criteria for those states not complying with Clean Water Act Section 303(c)(2)(B).

\* \* \* \* \*

(d) \* \* \*  
(14) \* \* \*  
(ii) \* \* \*

Use classification	Applicable criteria
Fish and Shellfish; Fish.	These classifications are assigned the criteria in: Column D2—all.
Water Supply (domestic).	These classifications are assigned the criteria in: Column D1—all.
Recreation .....	This classification is assigned the criteria in: Column D2—Marine waters and freshwaters not protected for domestic water supply.

\* \* \* \* \*

[FR Doc. E7-13207 Filed 7-6-07; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 67

#### Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

**ADDRESSES:** The final 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:** William R. Blanton, Jr., Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3151.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and

modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

*National Environmental Policy Act.* This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

*Regulatory Classification.* This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

*Executive Order 13132, Federalism.* This final rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This final rule meets the applicable standards of Executive Order 12988.

#### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

### PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified
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#### Town of Mapleton, Maine Docket No.: FEMA-B-7708

Maine .....	Town of Mapleton .....	Aroostook River .....	Downstream of Mapleton Corporate Limit	+433
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