



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 131**

**[EPA-HQ-OW-2012-0095; FRL-9795-8]**

**RIN 2040-AF33**

**Water Quality Standards; Withdrawal of Certain Federal Water Quality Criteria  
Applicable to California, New Jersey and Puerto Rico**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to amend the federal regulations to withdraw certain human health and aquatic life water quality criteria applicable to waters of New Jersey, Puerto Rico, and California's San Francisco Bay. In 1992, EPA promulgated the National Toxics Rule or NTR to establish numeric water quality criteria for 12 states and two Territories, including New Jersey, Puerto Rico and parts of California. On May 18, 2000, EPA then promulgated a final rule known as the California Toxics Rule or CTR in order to establish numeric water quality criteria for priority toxic pollutants for the State of California that were not previously in the NTR. These two states and one territory have now adopted, and EPA has approved, water

quality criteria for certain pollutants included in the NTR. Since California, New Jersey, and Puerto Rico now have criteria that are applicable water quality standards for purposes of the Clean Water Act, EPA has determined that the federally promulgated criteria are no longer needed for these pollutants. In today's action, EPA is amending the federal regulations to withdraw those certain criteria applicable to California, New Jersey, and Puerto Rico as described in the April 5, 2012 proposed rule. The withdrawal of the federally promulgated criteria will enable New Jersey, Puerto Rico, and California to implement their EPA-approved water quality criteria.

**DATES:** This final rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

**ADDRESSES:** EPA has established a docket for this action identified by Docket ID No. EPA-HQ-OW-2012-0095. 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 Office of Water ("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 Ave., 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 the U.S. EPA Region 2 and U.S. EPA Region 9 addresses. Docket materials can be accessed from 9:00 a.m. until 3:00 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information with respect to New Jersey, contact Wayne Jackson, U.S. EPA, Region 2, Clean Water Division, 290 Broadway, New York, New York 10007 (telephone: (212) 637-3807 or e-mail: [jackson.wayne@epa.gov](mailto:jackson.wayne@epa.gov)). For information with respect to Puerto Rico, contact Izabela Wojtenko U.S. EPA, Region 2, Clean Water Division, 290 Broadway, New York, NY 10007 (telephone: (212) 637-3814 or e-mail: [wojtenko.izabela@epa.gov](mailto:wojtenko.izabela@epa.gov)). For information with respect to California, contact Diane E. Fleck, P.E. Esq., U.S. EPA Region 9, WTR-2, 75 Hawthorne St. San Francisco, CA 94105 (telephone: (415) 972-3480 or e-mail: [fleck.diane@epa.gov](mailto:fleck.diane@epa.gov)). For general and administrative concerns, contact Bryan “Ibrahim” Goodwin, U.S. EPA Headquarters, Office of Science and Technology, 1200 Pennsylvania, Avenue NW, Mail Code 4305T, Washington, DC 20460 (telephone: (202) 566-0762 or e-mail: [goodwin.bryan@epa.gov](mailto:goodwin.bryan@epa.gov)).

## **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

No one is regulated by this rule. This rule withdraws certain federal water quality criteria applicable to New Jersey, Puerto Rico, and California. The withdrawal of the federal water quality criteria applicable to New Jersey and Puerto Rico in this action, in combination with previous federal withdrawal actions, results in the complete removal of New Jersey and Puerto Rico from the NTR.

## **Background**

In 1992, EPA promulgated the NTR to establish numeric water quality criteria for 12 states and two Territories, including New Jersey, Puerto Rico and parts of California (hereafter “States”) that had failed to comply fully with Section 303(c)(2)(B) of the Clean Water Act or CWA, 33 U.S.C. 1313(c)(2)(B) (57 FR 60848, December 22, 1992). The criteria codified at 40 CFR 131.36 became the applicable water quality standards in those 14 States for all purposes and programs under the CWA effective February 5, 1993.

On May 18, 2000, EPA then promulgated a final rule known as the CTR at 40 CFR 131.38 in order to establish numeric water quality criteria for priority toxic pollutants for the State of California that were not previously in the NTR, because the State had not complied fully with Section 303(c)(2)(B) of the CWA (65 FR 31682). At that time, any criteria promulgated as part of the NTR for California were codified in the criteria tables for the CTR at 40 CFR 131.38. The water quality standards program was developed with an emphasis on state primacy. Although in the NTR and CTR EPA promulgated toxic criteria for the certain States, EPA prefers that states maintain primacy and revise their own standards to achieve full compliance with the CWA (see 57 FR 60860, December 22, 1992). As described in the preamble to the final

NTR and CTR, when a State adopts, and EPA approves, water quality criteria that meet the requirements of the CWA, EPA issues a rule amending the NTR and/or CTR to withdraw the federal criteria applicable to that State. On April 5, 2012, EPA proposed the withdrawal of certain criteria for New Jersey, Puerto Rico and California's San Francisco Bay (see 77 FR 20585; April 5, 2012). EPA received comments for the proposed rule and a listing of the comments and EPA's responses are contained in the document "Response to Comments for Water Quality Standards; Withdrawal of Certain Federal Water Quality Criteria Applicable to California, New Jersey and Puerto Rico." Today, EPA is taking final action on its proposal. This rule does not remove any water quality protections. Rather, it removes a federal regulation that essentially duplicates State regulation.

### *New Jersey*

As discussed in the proposal (77 FR 20585; April 5, 2012), this final rule withdraws criteria for New Jersey related to two separate approval actions: August 16, 2002 and December 20, 2006. EPA's action approving New Jersey's adopted criteria (including a rationale for approving criteria that are less stringent than the federally promulgated criteria) can be accessed at OW docket number EPA-HQ-OW-2012-0095.

Today, EPA is withdrawing the federal water quality criteria listed below, as the state's criteria have been determined to meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131.

- Arsenic (aquatic life – freshwater (acute and chronic) and marine water (acute and chronic))

- Cadmium (aquatic life – freshwater (acute and chronic) and marine water (acute and chronic))
- Chromium III (aquatic life – freshwater (acute and chronic))
- Chromium VI (aquatic life – freshwater (acute and chronic) and marine water (acute and chronic))
- Copper (aquatic life – freshwater (acute and chronic) and marine water (acute and chronic))
- Lead (aquatic life – freshwater (acute and chronic) and marine water (acute and chronic))
- Mercury (aquatic life – freshwater (acute and chronic) and marine water (acute and chronic))
- Nickel (aquatic life – freshwater (acute and chronic) and marine water (acute and chronic))
- Selenium (aquatic life – freshwater (acute and chronic) and marine water (acute and chronic))
- Silver (aquatic life – freshwater (acute) and marine water (acute))
- Zinc (aquatic life – freshwater (acute and chronic) and marine water (acute and chronic))
- Chlorodibromomethane (human health – organisms only)
- 1,1-Dichloroethylene (human health—organisms only).
- 1,1,2,2-Tetrachloroethane (human health—organisms only).
- 1,1,2-Trichloroethane (human health—organisms only).
- Fluorene (human health – organisms only)
- Hexachlorbutadiene (human health – organisms only)
- Isophrone (human health – organisms only)
- gamma-BHC (human health – organisms only)

- PCBs (human health – water & organisms and organisms only)

The finalization of this action for New Jersey results in the complete removal of New Jersey from the NTR.

### ***Puerto Rico***

As discussed in the proposal (77 FR 20585; April 5, 2012), this final rule withdraws criteria for Puerto Rico related to one approval action on August 4, 2010. EPA's actions approving Puerto Rico's adopted criteria (including a rationale for approving criteria that are less stringent than the federally promulgated criteria) can be accessed at OW docket number EPA-HQ-OW-2012-0095.

Today, EPA is withdrawing the federal water quality criteria listed below, as Puerto Rico's criteria have been determined to meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131.

- Chromium VI (aquatic life – marine water (acute and chronic))
- Mercury (aquatic life – freshwater (chronic) and marine water (chronic))
- Thallium (human health –water & organisms and organisms only)
- Dioxin (human health – water & organisms and organisms only)
- Dichlorobromomethane (human health – water & organisms and organisms only)
- Benzo(a)Anthracene (human health – water & organisms and organisms only)
- Benzo(a)Pyrene (human health – water & organisms and organisms only)

- Benzo(b)Flouranthene (human health – water & organisms and organisms only)
- Benzo(k)Flouranthene (human health – water & organisms and organisms only)
- Chrysene (human health – water & organisms and organisms only)
- Dibenzo(a,h)Anthracene (human health – water & organisms and organisms only)
- Fluorene (human health – organisms only)
- Indeno(1,2,3-cd) Pyrene (human health – water & organisms and organisms only)
- Isophrone (human health – water & organisms and organisms only)
- alpha-BHC (human health – water & organisms and organisms only)
- beta-BHC (human health – water & organisms and organisms only)
- gamma-BHC (aquatic life – freshwater (chronic))
- alpha-Endosulfan (aquatic life – marine water (acute and chronic))
- beta-Endosulfan (aquatic life – marine water (acute and chronic))
- Endosulfan Sulfate (human health – water & organisms and organisms only)
- Endrin (aquatic life – freshwater (chronic))
- Endrin Aldehyde (human health – water & organisms and organisms only)
- Heptachlor Epoxide (aquatic life – freshwater (acute and chronic) and marine water (acute and chronic) (human health – water & organisms and organisms only)
- PCBs (aquatic life – freshwater (chronic) and marine water (chronic)) (human health – water & organisms and organisms only)

The finalization of the proposed actions for Puerto Rico results in the complete removal of Puerto Rico from the NTR.

### ***California***

As discussed in the proposal (77 FR 20585; April 5, 2012), this final rule withdraws cyanide criteria applicable to San Francisco Bay, California, which EPA approved on July 22, 2008, from the NTR and makes conforming edits to the CTR regulations found in 40 CFR 131. EPA's actions which approve California's adopted objectives can be accessed at OW docket number EPA-HQ-OW-2012-0095.

Today, EPA is withdrawing those federal water quality criteria for which California's criteria have been determined to meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131. This final rule will result in the withdrawal of saltwater aquatic life cyanide<sup>1</sup> criteria for San Francisco Bay under the NTR (with conforming changes to the CTR). However, other criteria for cyanide for waters in California that are currently part of the NTR or CTR will remain unchanged in the federal regulations.

## **II. Statutory and Executive Order Reviews**

### ***A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)***

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<sup>1</sup> In the regulatory text, saltwater criteria for cyanide are identified as Columns C1 and C2 of "Compound 14" in National Toxics Rule at 40 CFR 131.36(b)(1), therefore, the proposed withdrawal will remove Column C1 "pollutant 14" and Column C2 "pollutant 14" from the applicable criteria to Waters of San Francisco Bay, at 40 CFR 131.36(d)(10)(ii).

This action withdraws certain federal requirements applicable to California, New Jersey, and Puerto Rico, 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 review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

#### *B. Paperwork Reduction Act*

This rule does not impose any new information-collection burden because it is administratively withdrawing federal requirements that are no longer needed in New Jersey, Puerto Rico, and California. It does not include any information-collection, reporting, or recordkeeping requirements. The Office of Management and Budget (“OMB”) has, however, 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. The OMB control numbers for EPA’s regulations are listed in 40 CFR Part 9.

#### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act or RFA (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 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 or SBA's 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 III of the Unfunded Mandates Reform Act or UMRA (Public Law 104-4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Today's rule contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 or UMRA, 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any state, local, or tribal governments, or the private sector. 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 State and local government officials have an opportunity to provide input in the development of regulatory policies 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 governments. This rule 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 of August 4, 1999, entitled “Federalism” (64 FR 43255, August 10, 1999). This rule imposes no regulatory requirements or costs on any state or local governments. Thus, Executive Order 13132 does not apply to this action.

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

This rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). 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. Thus, Executive Order 13175 does not apply to this action.

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

This rule is not subject to Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866 and because EPA does not 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 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. 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) New Jersey's, Puerto Rico's, and California's criteria apply to all marine waters in the State, and thus 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 New Jersey's, Puerto Rico's, and California's 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). This rule will be effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

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

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements, Water pollution control.

Dated: March 22, 2013

**Bob Perciasepe,**

*Acting Administrator.*

For the reasons set out in the preamble title 40, Chapter I, part 131 of the Code of Federal Regulations 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.*

2. Section 131.36 is amended as follows:

- a. Removing and reserving paragraphs (d) (3) and (d) (4).
- b. Amending the table in paragraph (d)(10)(ii) as follows:
  - i. Adding a new first entry “Waters of the Sacramento-San Joaquin Delta within Regional Water Board 5”; and
  - ii. Revising the entry for “Waters of San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta”.

The additions and revisions read as follows:

**§131.36 Toxics criteria for those states not complying with Clean Water Act section 303**

**(c)(2)(B).**

\* \* \* \* \*

(d) \* \* \*

(10) \* \* \*

(ii) \* \* \*

<b>Water and use classification</b>	<b>Applicable criteria</b>
Waters of the Sacramento-San Joaquin Delta within Regional Water Board 5	Column C1-pollutant 14 Column C2 – pollutant 14
* * * * *	
Waters of San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta	These waters are assigned the criteria in:
	Column B1—pollutants 5a, 10* and 14
	Column B2—pollutants 5a, 10* and 14
	Column D2—pollutants 1, 12, 17, 18, 21, 22, 29, 30, 32, 33, 37, 38, 42-44, 46, 48, 49, 54, 59, 66, 67, 68, 78-82, 85, 89, 90, 91, 93, 95, 96, 98
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**§ 131.38 [Amended]**

3. Section 131.38 is amended by revising footnote “r” in the “Footnotes to Table in Paragraph (b) (1)” to read as follows:

**§ 131.38 Establishment of numeric criteria for priority toxic pollutants for the State of California.**

\* \* \* \* \*

r. These criteria were promulgated for specific waters in California in the NTR. The specific waters to which the NTR criteria apply include: Waters of the State defined as bays or estuaries including the Sacramento-San Joaquin Delta within California Regional Water Board 5, but excluding the San Francisco Bay. This section does not apply instead of the NTR for these criteria.

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**[FR Doc. 2013-07784 Filed 04/03/2013 at 8:45 am; Publication Date: 04/04/2013]**