

existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on 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 by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because 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, "Federalism" (64 FR 43255, August 10, 1999). The rule merely proposes to approve existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the State and the Federal government established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or 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 significantly regulatory action under Executive Order 12866.

In reviewing State operating permit programs submitted pursuant to Title V of the Clean Air Act, EPA will approve State programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a State program that otherwise satisfies the provisions of the Clean Air Act. 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.

#### List of Subjects in Part 70

Environmental protection,  
Administrative practice and procedure,

Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401-7671q.

**Dated:** July 13, 2001.

**Gary Gulezian,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 01-18884 Filed 7-27-01; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 131

[FRL-OW-7020-4]

### Water Quality Standards; Withdrawal of Federal Nutrient Standards for the State of Arizona

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** In 1976, EPA promulgated Federal criteria for nutrients in Arizona. The Federal criteria consisted of numeric ambient water quality criteria for nutrients for eleven river segments and narrative water quality criteria for nutrients applicable to all surface waters in Arizona. Arizona has now adopted its own numeric and narrative water quality criteria for nutrients, which EPA has approved. Arizona has also established and EPA has approved implementation procedures for its narrative nutrient water quality criteria. Therefore, EPA is proposing to withdraw the Federal criteria for nutrients applicable in Arizona. EPA is providing an opportunity for public comment on the withdrawal of the Federal nutrient criteria because the State's water quality criteria for nutrients, while protective of designated uses, in some cases may be less stringent than the corresponding federally promulgated nutrient criteria. **DATES:** EPA will accept public comments on this proposed rulemaking until September 28, 2001. Comments postmarked after this date may not be considered.

**ADDRESSES:** Send written comments to Gary Sheth, EPA, Region 9 (WTR-5), Water Division, 75 Hawthorne Street, San Francisco, CA 94105. Written comments should include an original plus three copies. Electronic comments are encouraged and should be submitted to sheth.gary@epa.gov. Electronic comments must be submitted as an ASCII file or a WordPerfect file. The supporting record for this rulemaking may be inspected (Monday through Friday, 8:00 a.m. to 4:30 p.m. excluding

legal holidays) at EPA, Region 9, Water Management Division, 75 Hawthorne Street, San Francisco, CA 94105. For access to docket materials, please call 415-744-2125. A reasonable fee will be charged for photocopies.

**FOR FURTHER INFORMATION CONTACT:** Gary Sheth (415-744-2008, sheth.gary@epa.gov) EPA, Region 9 (WTR-5), Water Division, 75 Hawthorne Street, San Francisco, CA 94105, or Jennifer Wigal (202-260-5177, wigal.jennifer@epa.gov) EPA Headquarters, Office of Water (4305), 1200 Pennsylvania Ave NW, Washington, DC 20460.

#### SUPPLEMENTARY INFORMATION:

##### I. Potentially Affected Entities

##### II. Background

A. What Are the Statutory and Regulatory Requirements Relevant to this Action?

B. What Actions Have EPA and Arizona Taken in the Past Relating to Water Quality Standards for Nutrients in the State?

C. What Water Quality Standards for Nutrients Currently Apply in Arizona?

D. What Water Quality Standards Will Apply if EPA Withdraws the Federal Nutrient Criteria in Arizona?

##### III. Administrative Requirements

#### I. Potentially Affected Entities

Citizens concerned with water quality in Arizona may be interested in this proposed rulemaking. Entities discharging nitrogen or phosphorous to waters of the United States in Arizona could be affected by this proposed rulemaking because water quality criteria are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Potentially affected entities include:

Category	Examples of potentially affected entities
Industry .....	Industries discharging nutrients to surface waters in Arizona.
Municipalities .....	Publicly-owned treatment works discharging nutrients to surface waters in Arizona.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES regulated entities that could potentially 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. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## II. Background

### A. What Are the Statutory and Regulatory Requirements Relevant to This Action?

Section 303(c) (33 U.S.C. 1313(c)) of the Clean Water Act (CWA or Act) directs States, with oversight from EPA, to adopt water quality standards to protect the public health and welfare, enhance the quality of water and serve the purposes of the Act. States are required to develop water quality standards for waters of the United States within the State. Section 303(c) provides that a water quality standard shall include the designated use or uses to be made of the water and the water quality criteria necessary to protect those uses. States may also include in their water quality standards policies generally affecting the standards' application and implementation. 40 CFR 131.6(f); 40 CFR 131.13. States are required to review their water quality standards at least once every three years and, if appropriate, revise or adopt new standard. 33 U.S.C. 1313(c)(2). States are required to submit the results of their reviews to EPA. EPA then reviews the State's standards for consistency with the CWA and EPA's implementing regulations at 40 CFR Part 131 and approves or disapproves any new or revised standards. 33 U.S.C. 1313(c)(3). Section 303(c)(4) of the CWA authorizes EPA to promulgate water quality standards when necessary to supersede disapproved State water quality standards, or in any case where the Administrator determines that new or revised standards are necessary to meet the requirements of the CWA.

EPA will issue a rule to withdraw Federal water quality standards promulgated for a State when the State adopts, and EPA approves, State water quality standards that meet the requirements of the CWA and the implementing Federal regulations. Because the State's water quality criteria for nutrients, while protective of designated uses, may in some cases be less stringent than the federally promulgated standards, EPA is providing an opportunity for the public to comment on the proposed withdrawal of the Federal nutrient criteria for Arizona. EPA requests comment on whether there are any waterbodies in Arizona where the Federal nutrient criteria should not be removed. For such waterbodies, EPA solicits data documenting existing conditions which indicate that designated uses would not be protected by Arizona's numeric or narrative nutrient water quality criteria.

### B. What Actions Have EPA and Arizona Taken in the Past Relating to Water Quality Standards for Nutrients in the State?

In 1976, EPA determined that water quality standards for nutrients submitted by Arizona as of that time did not meet the CWA's requirements. EPA promulgated Federal numeric nutrient criteria for total phosphates applicable to eleven river segments in Arizona, Federal numeric nutrient criteria for total nitrates applicable to four waterbodies, and Federal narrative nutrient criteria applicable to all surface waters of Arizona. See 40 CFR 131.31(a); 41 FR 25000 (June 22, 1976). Although EPA used the phrase *nutrient standards* to describe the water quality criteria for nutrients codified at 40 CFR 131.31(a), in today's proposal, EPA is using the more precise term *criteria* to refer to Federal water quality criteria for nutrients for Arizona that EPA is proposing to withdraw.

Since EPA's promulgation of nutrient criteria for Arizona, the Arizona Department of Environmental Quality (ADEQ) in a series of actions adopted numeric nutrient criteria for total nitrogen and total phosphorous applicable to specific water bodies in Arizona. See Arizona Administrative Code, R18-11-109, 11-110, and 11-112. Arizona has also adopted narrative nutrient criteria applicable to all surface waters of the State. See Arizona Administrative Code, R18-11-108. Arizona's narrative nutrient criteria provide that *navigable waters shall be free from pollutants in amounts or combinations that cause the growth of algae or aquatic plants that inhibit or prohibit the habitation, growth or propagation of other aquatic life or that impair recreational uses*. See Arizona Administrative Code, R18-11-108.A.5. Since EPA's promulgation of nutrient water quality criteria in 1976, EPA has approved the numeric and narrative water quality criteria for nutrients adopted by Arizona. See, e.g., EPA's **Federal Register** notices of approvals at 53 FR 4209 (Feb. 12, 1988); 58 FR 62124 (Nov. 24, 1993); 60 FR 51793 (Oct. 3, 1995).

Arizona's adopted and approved numeric water quality criteria for nutrients are based on total phosphorous and total nitrogen whereas the numeric water quality criteria for nutrients promulgated by EPA in 1976 are based on total phosphates and total nitrates. Total phosphorous and total nitrogen are more encompassing measurements of the presence of these types of nutrients than total phosphates and total nitrates, for which EPA

promulgated water quality criteria in 1976. Elemental phosphorous and nitrogen can be present in different forms under different conditions (for example, as phosphates and nitrates). For this reason, to quantify the total phosphorous and nitrogen present, EPA recommends measuring concentrations of total phosphorous and total nitrogen. Although EPA is not able to directly compare Arizona's nutrient criteria based on total phosphorous and total nitrogen with the Federal criteria based on total phosphates and total nitrates, the CWA and EPA's regulations at 40 CFR 131.11 only require that States adopt criteria that are scientifically defensible and sufficiently detailed to protect the designated uses of the waterbodies. When EPA approved these criteria, EPA determined that they met this requirement and adequately protected Arizona waters from nutrient overenrichment (the same objective of the 1976 federal nutrients water quality criteria). Arizona's numeric nutrient criteria are also consistent with EPA's current guidance recommending water quality criteria for the control of nutrients be expressed in terms of total nitrogen and total phosphorous. See *Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs*, EPA-822-B-00-001; *Ambient Water Quality Criteria Recommendations: Lakes and Reservoirs in Nutrient Ecoregion II*, EPA-822-B-00-007; *Ambient Water Quality Criteria Recommendations: Rivers and Streams in Nutrient Ecoregion II*, EPA 822-B-00-015; *Ambient Water Quality Criteria Recommendations: Rivers and Streams in Nutrient Ecoregion III*, EPA 822-B-00-016. In short, the State's numeric and narrative nutrient criteria adopted from 1976 to 1996, along with the implementation procedures for the narrative nutrient criteria, fully protect the designated uses of Arizona's surface waters, and as such are consistent with the CWA and the implementing Federal regulations at 40 CFR 131.11. (For more detailed information on EPA's analysis, see EPA's approval decisions contained in the docket to this rulemaking.)

In EPA's action taken in 1993, EPA approved the numeric and narrative nutrient criteria adopted by the State, but disapproved the absence of implementation procedures for the narrative nutrient water quality criteria. In January 1996, EPA proposed Federal water quality standards addressing several deficiencies in Arizona's water quality standards, which included the identification of appropriate procedures and methods for interpreting and implementing the State's narrative

nutrient criteria. See 61 FR 2766 (January 29, 1996). Also in January 1996, ADEQ established implementation procedures for its narrative nutrient water quality criteria (see Arizona's *Implementation Guidelines for the Narrative Nutrient Standard*). On April 26, 1996, EPA approved these implementation procedures. In the preamble to the final rule promulgating other water quality standards elements for Arizona, EPA explained that promulgation of Federal implementation procedures for Arizona's narrative nutrient criteria was no longer necessary because the State had identified its own implementation procedures. See 61 FR 20686 (May 7, 1996). Although EPA did not specifically address the continuing need for the 1976 Federal nutrient criteria, in its decision not to promulgate Federal implementation procedures, EPA observed that Arizona's numeric and narrative nutrient criteria, as supplemented by the State's newly established implementation procedures, were consistent with the CWA and that no new Federal water quality standard to implement the State's narrative criteria was necessary to meet the CWA's requirements. See 61 FR 20692 (May 7, 1996). Consistent with this earlier finding, EPA has determined that the 1976 Federal criteria for nutrients for Arizona waters are redundant and no longer necessary. EPA is therefore proposing to withdraw the Federal water quality criteria for nutrients applicable to Arizona surface waters at 40 CFR 131.31(a).

#### C. What Water Quality Standards for Nutrients Currently Apply in Arizona?

Since EPA's 1976 promulgation of water quality criteria for nutrients for Arizona surface waters, the State has adopted numeric nutrient water quality criteria applicable to specified surface waters of the State, adopted narrative nutrient water quality criteria applicable to all of its surface waters, and established implementation procedures for its narrative nutrient water quality criteria. These individual adoptions were approved by EPA between 1976 and 1996.

Currently, both the Federal and State nutrient criteria apply in Arizona. This includes the Federal numeric and narrative nutrient criteria (40 CFR 131.31(a)); the State's numeric nutrient water quality criteria (R18-11-109, 11-110, and 11-112); the State's narrative nutrient water quality criteria (R18-11-108); the State's regulation regarding nutrient waivers (R18-11-115); and the State's implementation procedures established for its narrative nutrient water quality criteria.

#### D. What Water Quality Standards Will Apply If EPA Withdraws the Federal Nutrient Criteria in Arizona?

The goal of EPA's 1976 rulemaking in Arizona was to establish water quality criteria to protect the designated uses of Arizona surface waters. EPA may withdraw federally promulgated water quality standards after the State adopts, and EPA approves, water quality standards that meet the requirements of the CWA and the implementing Federal regulations. EPA is proposing to withdraw the Federal numeric and narrative nutrient criteria at 40 CFR 131.31(a). If finalized, the applicable nutrient criteria in Arizona will consist of the State's own numeric and narrative nutrient criteria along with the corresponding implementation procedures for the narrative criteria. Not affected by this proposal are federal water quality standards codified at 40 CFR 131.31(b) & (c), which among other things, designate fish consumption as a use for certain waters, and require implementation of a monitoring program regarding mercury's effects on wildlife. These provisions remain in effect.

Table 1 below displays the Federal numeric criteria for nutrients and the State's corresponding criteria. The waterbody segments listed in Table 1 are the waters for which Federal numeric nutrient criteria apply. The applicable Federal nutrient criteria and the corresponding State nutrient criteria are listed for each water body. Because the Federal and State nutrient criteria are based on measurements of different parameters (i.e., total phosphates and total nitrates versus total phosphorous

and total nitrogen), this table does not provide a direct comparison of the Federal and State nutrient criteria but rather describes how individual waters that are currently covered by the Federal criteria for nutrients will be covered by Arizona's water quality standards. For waterbodies or waterbody segments listed in rows 4, 8, 9 and 11, Arizona has adopted numeric nutrient water quality criteria for either total nitrogen, total phosphorus, or both. In addition to the numeric nutrient criteria in Table 1 for the listed stream segments, Arizona has adopted numeric nutrient criteria for additional stream segments not covered by the Federal nutrient criteria. EPA approved Arizona's numeric nutrient criteria because the criteria were derived using sound science and are protective of the designated uses of those waters. Readers interested in viewing Arizona's numeric nutrient criteria not listed in Table 1 should consult Arizona's water quality standards (R18-11-109, 11-110, and 11-112).

For waterbodies or waterbody segments where Arizona has not adopted numeric nutrient water quality criteria to replace the Federal numeric water quality criteria for nutrients (the waters listed in rows 1, 2, 3, 5, 6, and 10), the State's narrative nutrient criteria apply. The narrative nutrient criteria, in conjunction with Arizona's *Implementation Guidelines for the Narrative Nutrient Standard*, will provide the same intended level of protection as the Federal criteria by fully protecting the designated uses of these waters because it allows for consideration of site-specific factors. Indeed, when necessary, narrative criteria with the appropriate implementation procedures can be used to obtain quantitative measures having a greater degree of precision and site specificity than a single numeric target. EPA reviewed and approved Arizona's narrative nutrient criteria and the *Implementation Guidelines for the Narrative Nutrient Standard* as being scientifically defensible and consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11.

TABLE 1.—FEDERAL NUTRIENT CRITERIA IN CFR 131.31(A) AND ARIZONA NUMERIC NUTRIENT CRITERIA

Waterbody segment	Federal criteria at 40 CFR 131.31 (mg/L) (mean/90th percentile)		Arizona criteria (mg/L) (mean/90th percentile/max)	
	Total phosphates	Total nitrates	Total phosphorus	Total nitrogen
1. Colorado River from Utah border to Willow Beach .....	0.04/0.06	4/7	nnc	nnc
2. Colorado River from Willow Beach to Parker Dam .....	0.06/0.10	5/—	nnc	nnc
3. Colorado River from Parker Dam to Imperial Dam .....	0.08/0.12	5/7	nnc	nnc
4. Colorado River from Imperial Dam to Morelos Dam .....	0.10/0.10	5/7	nnc/0.33/nnc	nnc/2.50/nnc

TABLE 1.—FEDERAL NUTRIENT CRITERIA IN CFR 131.31(A) AND ARIZONA NUMERIC NUTRIENT CRITERIA—Continued

Waterbody segment	Federal criteria at 40 CFR 131.31 (mg/L) (mean/90th percentile)		Arizona criteria (mg/L) (mean/90th percentile/max)	
	Total phosphates	Total nitrates	Total phosphorus	Total nitrogen
5. Gila River from New Mexico border to San Carlos Reservoir (excluding the San Carlos Reservoir) .....	0.50/0.80	—/—	nnc	NA
6. Gila River from San Carlos Reservoir to Ashurst Hayden Dam (including San Carlos Reservoir) .....	0.30/0.50	—/—	nnc	NA
7. San Pedro River .....	0.30/0.50	—/—	nnc	NA
8. Verde River (except Granite Creek) .....	0.20/0.30	—/—	0.10/0.30/1.00	NA
9. Salt River above Roosevelt Lake (except Pinal Creek) .....	0.20/0.30	—/—	0.12/0.30/1.00	NA
10. Santa Cruz River from international boundary near Nogales to Sahuarita .....	0.50/0.80	—/—	nnc	NA
11. Little Colorado River above Lyman Reservoir .....	0.30/0.50	—/—	0.20/0.30/0.75	NA

—: No Federal numeric Nutrient Criteria were promulgated.

nnc: The State's narrative nutrient water quality criteria apply in conjunction with the State's implementation procedures.

NA: EPA has not presented the State's nutrient criteria for total nitrogen for these waters because these waters were not subject to the 1976 Federal nutrient water quality criteria.

EPA is developing waterbody-type guidance describing the techniques for assessing the trophic state of a waterbody and methodologies for deriving nutrient water quality criteria appropriate to different geographic regions. Separate guidance has been developed for rivers and lakes; guidance for coastal waters and wetlands is underway. For freshwaters, the guidance recommends that approaches for developing nutrient water quality criteria address total nitrogen, total phosphorus, chlorophyll-a, and algal turbidity. EPA has also published recommended ecoregion-specific nutrient water quality criteria for States to use as guidance in adopting water quality standards. See 66 FR 1671 (January 9, 2001). EPA has published nutrient water quality criteria guidance for the ecoregions contained within Arizona for rivers and streams and for certain lakes and reservoirs. EPA intends these recommended water quality criteria to serve as guidance for States as they develop and update their own nutrient water quality criteria. If, in the future, new data or information suggests that the State's nutrient criteria should be revised, EPA will work with Arizona to support and assist in adoption of new or revised water quality criteria for nutrients.

### III. Administrative Requirements

This proposed withdrawal of Federal criteria is deregulatory in nature and would impose no additional regulatory requirements or costs on anyone. Therefore, it has been determined that this proposed action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and accordingly is not

subject to review by the Office of Management and Budget nor is it subject to Executive Order 13211 (66 FR 28355, May 22, 2001). For the same reason, pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that this action contains no Federal mandates for State, local or tribal governments, or the private sector, nor does it contain any regulatory requirements that might significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of sections 202, 203 and 205 of the Unfunded Mandates Reform Act (Public Law 104–4). Further, this action does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action 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 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

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 rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Section 7 of the Endangered Species Act (16 U.S.C. 1656 *et seq.*), requires Federal agencies, in consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, to ensure that their actions are unlikely to jeopardize the continued existence of listed species or adversely affect designated critical habitat of such species. EPA intends to fulfill any applicable ESA requirements prior to final withdrawal of the Federal nutrient standards for Arizona. (None of the Arizona waters affected by this proposed rule has species or habitats within the jurisdiction of National Marine Fisheries Service.)

### List of Subjects in 40 CFR Part 131

Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: July 24, 2001.

**Christine Todd Whitman,**  
Administrator.

For the reasons set out in the preamble, Part 131 of title 40, chapter I of the Code of Federal Regulations is proposed to be 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.*

#### § 131.31 [Amended]

2. Section 131.31 is amended by removing and reserving paragraph (a).  
[FR Doc. 01–18886 Filed 7–27–01; 8:45 am]

**BILLING CODE 6560–50–P**