

is presented above in the **ADDRESSES** section.

Dated: June 24, 2011.

**Gina McCarthy,**

*Assistant Administrator.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 131

[EPA-HQ-OW-2011-0515; FRL-9428-3]

### Phosphorus Water Quality Standards for Florida Everglades

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a rule that would identify provisions of Florida's Water Quality Standards for Phosphorus in the Everglades Protection Area (Phosphorus Rule) and Florida's Amended Everglades Forever Act (EFA) that EPA has disapproved and that therefore are not applicable water quality standards for purposes of the Clean Water Act. EPA is proposing today's rule following EPA's disapproval of these provisions and EPA's specific directions to the State of Florida to correct these deficiencies in the Phosphorus Rule and EFA. EPA's disapproval, specific directions to the State, and today's proposed rule implement two orders by the U.S. District Court for the Southern District of Florida. The intended effect of today's proposed rule is to identify only those provisions of Florida law that EPA has disapproved and that therefore are not applicable water quality standards for purposes of the Clean Water Act.

**DATES:** Comments must be received on or before August 1, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OW-2011-0515 by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments. This electronic docket is EPA's preferred method of receiving comments.

- *Mail:* Water Docket, U.S. Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

- *Hand Delivery:* EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. 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-2011-0515. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <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 <http://www.regulations.gov> or e-mail. The <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 <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 instructions on submitting comments, go to section I.D of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** All documents in the docket are listed in the <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 <http://www.regulations.gov> or in hard copy at the OW Docket Center, which is open from 8:30 until 4:30 pm, Monday through Friday, excluding legal holidays. The OW Docket Center 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.

**FOR FURTHER INFORMATION CONTACT:** Mario Sengco, Standards and Health Protection Division, Office of Science and Technology, Mail Code: 4305T, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 566-2676; e-mail: [sengco.mario@epa.gov](mailto:sengco.mario@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

*A. What entities may be affected by this rule?*

Citizens concerned with water quality in Florida may be interested in this rulemaking. Entities discharging phosphorus to waters upstream of the Everglades Protection Area could be indirectly affected by the Phosphorus Rule and EFA, although not specifically by this proposed rulemaking because the current action further addresses prior disapproval by EPA of certain provisions of the Phosphorus Rule and EFA. Any indirect affect to entities would be because the water quality standards contained in the State's regulation and statute are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. With this in mind, categories and entities that may ultimately be indirectly affected include:

| Category                           | Examples of potentially affected entities                                                         |
|------------------------------------|---------------------------------------------------------------------------------------------------|
| Water Management Districts .....   | Entities responsible for managing point source discharges near the Everglades Protection Area.    |
| Nonpoint Source Contributors ..... | Entities responsible for contributing nonpoint source runoff near the Everglades Protection Area. |

This table is not intended to be exhaustive, but rather provides a guide for entities that may be affected by this action. This table lists the types of entities of which EPA is now aware that potentially could be affected by this action. Other types of entities not listed in the table could also be affected. Any parties or entities conducting activities within watersheds of the Florida waters covered by this rule, or who rely on, depend upon, influence, or contribute to the water quality of the Everglades Protection Area, might be affected by this rule. To determine whether your facility or activities may be affected by this action, you should examine this proposed rule. 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.

*B. How do I get copies of this notice?*

*Docket.* EPA has established an official public docket for this action under Docket ID No. EPA-HQ-OW-2011-0515. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Although all documents in the docket are listed in an index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available electronically through <http://www.regulations.gov> and in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the public Reading Room is (202) 566-1744 and the telephone number for the Water docket is (202) 566-2426.

*C. What comments will be considered and what should I consider as I prepare my comments for EPA?*

(1) The public is invited to submit comments on whether EPA's proposed rule is consistent with EPA's disapprovals of the Phosphorus Rule and EFA and the Court's orders.

(2) The public is invited to submit comments regarding EPA's approach of identifying, through incorporation by reference, those provisions of the Phosphorus Rule and EFA that are not applicable water quality standards for purposes of the CWA.

(3) Do not submit confidential business information (CBI) to EPA through the <http://www.regulations.gov>

portal. Contact EPA before submitting CBI by contacting the person in **FOR FURTHER INFORMATION CONTACT** section.

## II. Background

EPA is proposing a rule that would identify provisions of Florida's Water Quality Standards for Phosphorus in the Everglades Protection Area (Phosphorus Rule) and Florida's Amended Everglades Forever Act (EFA) that EPA has disapproved and that therefore are not applicable water quality standards for purposes of the Clean Water Act. EPA is proposing today's rule following its disapproval of these provisions and EPA's specific directions to the State of Florida to correct these deficiencies in the Phosphorus Rule and EFA. EPA's disapproval and specific directions to the State implement two orders by the U.S. District Court for the Southern District of Florida. Pursuant to the Court's orders, EPA gave the State a period of time to correct the deficiencies. The State has not corrected the deficiencies within that time period. Therefore, EPA is proposing today's rule. The proposed rule incorporates by reference two documents that identify the specific provisions of Florida's Phosphorus Rule and EFA that are not applicable water quality standards for purposes of the Clean Water Act.

### A. Statutory and Regulatory Background

Section 303(c) (33 U.S.C. 1313) of the Clean Water Act (CWA) directs States, with oversight by EPA, to adopt water quality standards to protect the public health and welfare, enhance the quality of water and serve the purposes of the CWA. Under section 303, States are required to develop water quality standards for waters of the United States within the State. Section 303(c) and EPA's implementing regulations (40 CFR Part 131) provide that water quality standards shall include designated uses of the water and water quality criteria necessary to protect those uses.

States must submit any new or revised water quality standards for EPA review and approval/disapproval. EPA must approve/disapprove any new or revised standards within 60–90 days. (Section 303(c)(3)). If EPA disapproves any standard, EPA is to specify the changes to meet the requirements of the CWA. If the changes are not adopted by the State, EPA is to promulgate standards to address the necessary changes in the State standards that EPA has disapproved. Today, EPA is proposing Federal standards to address the portions of Florida's standards that EPA disapproved and that have not been revised by the State.

## B. Florida's Phosphorus Rule and Everglades Forever Act

### 1. Florida's Phosphorus Rule

In 2005, the Florida Department of Environmental Protection (FDEP) submitted to EPA for review pursuant to CWA section 303(c), provisions of Florida Administrative Code ("FAC") 62–302.540 entitled "Water Quality Standards for Phosphorus Within the Everglades Protection Area" (Phosphorus Rule or Rule). The Rule established a numeric water quality criterion for phosphorus as well as implementing provisions for the numeric criterion within the Everglades Protection Area. In 2005 and 2006, EPA issued a series of decisions approving certain provisions of the Phosphorus Rule and concluding that other provisions were not new or revised water quality standards and did not require EPA approval/disapproval under CWA section 303(c).

### 2. Florida's Everglades Forever Act

The Florida Legislature enacted the Everglades Forever Act in 1994 to maintain and restore the ecosystem of the Everglades. See *Miccosukee Tribe of Indians v. United States*, 105 F.3d 599, 601 (11th Cir. 1997). EPA subsequently reviewed and approved one section of the EFA (section 4(f)) as a new or revised water quality standard in 1999. The Legislature enacted amendments to the EFA in 2003. EPA reviewed the amendments and issued a decision in 2003 that the amendments were not new or revised water quality standards requiring EPA approval/disapproval under section 303(c) of the CWA.

### C. Litigation and Subsequent EPA Actions

In consolidated litigation, plaintiffs challenged (1) EPA's 2003 decision that the EFA amendments were not water quality standards and (2) EPA's 2005 and 2006 decisions regarding the Phosphorus Rule. In a July 29, 2008 decision, the U.S. District Court for the Southern District of Florida upheld in part and remanded in part EPA's decisions. *Miccosukee Tribe of Indians & Friends of the Everglades v. U.S. Environmental Protection Agency, Florida Department of Environmental Protection, et al.*, No. 04–21488–CIV–Gold/McAliley (S.D. Fla.). The Court upheld EPA's 2005 approval of the Phosphorus Rule's numeric phosphorus criterion and the "four-part" test for determining attainment of the criterion. The Court overturned (1) EPA's decision that certain implementing provisions of the Phosphorus Rule were not new or revised water quality standards and (2)

EPA's approval of other provisions of the Phosphorus Rule finding EPA's approval to be arbitrary and capricious. The Court also rejected EPA's determination that the legislative amendments to the EFA did not constitute new or revised water quality standards subject to EPA review (and approval or disapproval) under section 303(c) of the CWA. The Court remanded to EPA to take further action consistent with the Court's decision.

#### 1. EPA's December 2009 Determination

On December 3, 2009, EPA issued a new Determination in response to the Court's remand. Consistent with the Court's 2008 decision, EPA disapproved certain amendments to the EFA. It is those disapproved provisions of the EFA that are, in part, the subject of today's proposed rulemaking. In addition, EPA reviewed the provisions of the Phosphorus Rule that the Court either found were new or revised standards or that the Court had held EPA's prior approval invalid. Consistent with the Court's decision, EPA disapproved certain provisions of the Phosphorus Rule and those disapproved provisions also are the subject of today's proposed rulemaking.

#### 2. Court's April 10, 2010 Order

Plaintiffs challenged EPA's December 2009 Determination, alleging, in part, that EPA failed to (1) specify the changes that Florida must make to the Phosphorus Rule and EFA to bring them into compliance with the CWA and (2) commit to promulgate if the State fails to act. The Court, in an order dated April 10, 2010, remanded EPA's 2009 Determination and ordered EPA to issue an Amended Determination (AD) by September 3, 2010. While the Court did not take issue with EPA's disapprovals, the Court nevertheless ordered that EPA's AD "shall specifically direct the State of Florida to correct deficiencies in the Amended EFA and Phosphorus Rule that have been invalidated," attaching copies of the Rule and EFA with strikeout markings indicating the exact language from the Rule and EFA that the State must correct. Order at 44. The Court ordered that in the AD, "EPA shall require the State of Florida to commence and complete rule-making for the Phosphorus Rule within 120 days from the date of the Amended Determination and shall require amendments to the Amended EFA to be enacted by July 1, 2011." Order at 44–45. The Court further ordered that "[i]n the event the State of Florida fails to timely act, the EPA shall provide timely notice, and the EPA Administrator 'shall promulgate such standard[s]'

pursuant to 33 U.S.C. 1313(c)." Order at 45.

#### 3. EPA's September 3, 2010 Amended Determination

Consistent with the Court's April 14, 2010 Order, EPA gave directions to the State of Florida for correcting deficiencies in the Phosphorus Rule and Amended EFA. EPA's AD included as attachments copies of the Phosphorus Rule and EFA with strikeout markings indicating the language that the State needed to correct. EPA's AD stated that if FDEP has not finalized revisions by January 1, 2011 and the Legislature has not enacted amendments to the EFA by July 1, 2011, EPA would initiate rulemaking to promulgate standards consistent with the Court's Order.

FDEP initiated a rulemaking to adopt the necessary revisions to the Phosphorus Rule consistent with EPA's AD. However, FDEP did not complete that process by January 1, 2011. Nor has FDEP completed its rulemaking process since that date. The Florida Legislature also did not introduce or enact any amendments to the EFA consistent with EPA's AD. The Florida Legislature stands adjourned and is not scheduled to reconvene prior to July 1, 2011. Therefore, EPA is proceeding, consistent with the Court's Order and EPA's AD, to initiate the rulemaking process to promulgate Federal standards addressing the deficiencies of the Phosphorus Rule and EFA.

#### III. EPA's Proposal and Solicitation of Public Comments

EPA's proposed rule identifies those provisions in the Phosphorus Rule and Everglades Forever Act that EPA has disapproved and that therefore are not applicable water quality standards for purposes of the CWA. The provisions are the ones that EPA previously disapproved in December 2009 that the Court identified in its April 2010 Order and that EPA identified in its September 2010 AD. EPA's proposed rule incorporates by reference copies of the Phosphorus Rule and EFA with the strikeout markings indicating the provisions and language that are not applicable water quality standards for purposes of the CWA.

For the convenience of persons reviewing this proposal, EPA has put copies of the Phosphorus Rule and Amended Everglades Forever Act in the docket, with the strikeout markings indicating the language that EPA disapproved and that EPA's proposed rule identifies as not being applicable water quality standards for purposes of the CWA. The provisions of the Phosphorus Rule and EFA that will not

be applicable water quality standards for purposes of the CWA are summarized in Tables 1 and 2.

The remaining provisions of the Phosphorus Rule and EFA in the docket either already have been approved by EPA as new or revised water quality standards (*i.e.*, are applicable water quality standards for the purposes of the CWA), or are not a water quality standard subject to EPA review and approval (or disapproval) under the Clean Water Act. As explained in the Statutory and Regulatory Background (II.A) and in the sections below, EPA is not proposing to promulgate any of the remaining provisions that EPA has approved or that are not water quality standards.

In the Court's 2010 order, the judge struck a provision in the EFA (*i.e.*, paragraph 2(l)), which defined the term "optimization." In today's action, EPA is not identifying the strike out paragraph 2(l) in the EFA or paragraph 3(f) in the Phosphorus Rule because EPA did not specifically disapprove either provision in its December 2009 Determination. EPA believes that its decision not to identify these two definitions in today's proposed rule will not conflict with the objectives of the Court in its ruling because EPA disapproved the other provisions in the EFA and Phosphorus Rule where the term "optimization" occurs and EPA has identified those disapproved provisions in today's proposed rule.

For the convenience of the reader and to improve the readability of the documents, EPA has included a few minor text changes to the Phosphorus Rule and Amended Everglades Forever Act in the docket. These changes are identified by underline. EPA included these few text changes in its submission to the Court and the Court's April 2011 order reflects these changes. EPA added text when deletion of the disapproved language rendered the remaining text difficult to understand. In EFA section 10 for example, EPA's added text would restore language that existed prior to enactment of EFA amendments. In these sections, EPA is not proposing to establish new or revised water quality standards with these text changes, but merely to restore language that would make the remaining text easier to understand. Similarly, for ease of readability, the docket versions of the Phosphorus Rule and Amended Everglades Forever Act strike the definitions of "optimization" (which is defined only for the purposes of other provisions that EPA disapproved) from sections 2(l) and 3(f), respectively, as discussed above.

TABLE 1—62–302.540 PROVISIONS OF FLORIDA ADMINISTRATIVE CODE (F.A.C.) (WATER QUALITY STANDARDS FOR PHOSPHORUS WITHIN THE EVERGLADES PROTECTION AREA) THAT ARE NOT APPLICABLE WATER QUALITY STANDARDS FOR PURPOSES OF THE CLEAN WATER ACT

| Section             | Specific provision or language                                                                                                                                                       |
|---------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1)(a) .....        | Entire paragraph.                                                                                                                                                                    |
| (1)(b)(2) .....     | Entire paragraph.                                                                                                                                                                    |
| (2)(b)–(f) .....    | Entire paragraphs and subparagraphs.                                                                                                                                                 |
| (2)(h) .....        | Entire paragraph.                                                                                                                                                                    |
| (2)(l) .....        | Entire paragraph.                                                                                                                                                                    |
| (3)(a)–(b) .....    | Entire paragraphs.                                                                                                                                                                   |
| (3)(h) .....        | Entire paragraph.                                                                                                                                                                    |
| (4)(d)(2)(c) .....  | Sentence only, “If these limits are not met, no action shall be required, provided that the net improvement or hydropattern restoration provisions of subsection (6) below are met.” |
| (5)(a) .....        | Entire paragraph.                                                                                                                                                                    |
| (5)(b)(2)–(3) ..... | Entire paragraphs.                                                                                                                                                                   |
| (5)(d) .....        | Entire paragraph.                                                                                                                                                                    |
| (6)(a)–(c) .....    | Entire paragraphs and subparagraphs.                                                                                                                                                 |

TABLE 2—PROVISIONS OF THE AMENDED EVERGLADES FOREVER ACT (FLORIDA STATUTE 373.4592) THAT ARE NOT APPLICABLE WATER QUALITY STANDARDS FOR PURPOSES OF THE CLEAN WATER ACT

| Section          | Specific provision or language                                                                                                                                                                                                                        |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (2)(a) .....     | Entire paragraph.                                                                                                                                                                                                                                     |
| (2)(g) .....     | Sentence 1, phrase “are further described in the Long-Term Plan”.                                                                                                                                                                                     |
| (2)(j) .....     | Entire paragraph.                                                                                                                                                                                                                                     |
| (2)(p) .....     | Entire paragraph.                                                                                                                                                                                                                                     |
| (3)(b)–(e) ..... | Entire paragraphs.                                                                                                                                                                                                                                    |
| (4)(a) .....     | Sentence 9, phrase “design, construction, and implementation of the initial phase of the Long-Term Plan, including operation and maintenance, and research for the projects and strategies in the initial phase of the Long-Term Plan, and including” |
| (4)(a)(4) .....  | Sentence 1, phrase “however, the district may modify this schedule to incorporate and accelerate enhancements to STA $\frac{3}{4}$ as directed in the Long-Term Plan”.                                                                                |
| (4)(a)(6) .....  | Entire subparagraph.                                                                                                                                                                                                                                  |
| (4)(e)(2) .....  | Sentences 7, 8 and 9.                                                                                                                                                                                                                                 |
| (4)(e)(3) .....  | Sentence 3.                                                                                                                                                                                                                                           |
| (10) .....       | Sentence 1, phrase “to implement the pre-2006 projects and strategies of the Long-Term Plan.”                                                                                                                                                         |
|                  | Sentence 1, phrase “in all parts of the Everglades Protection Area”.                                                                                                                                                                                  |
|                  | Sentence 1, phrase “and moderating provisions”.                                                                                                                                                                                                       |
| (10)(a) .....    | Entire paragraph.                                                                                                                                                                                                                                     |

EPA believes that its proposal to incorporate by reference documents that identify those specific provisions of the Phosphorus Rule and EFA that are not applicable water quality standards for purposes of the CWA best accomplishes the purpose of removing those provisions from consideration for future implementation within CWA programs.

EPA considered other approaches to accomplish this result and decided the approach the Agency is proposing today is the most appropriate approach. Because the Phosphorus Rule and EFA are Florida laws, EPA could not “amend” those state laws. EPA considered whether it should incorporate the complete Phosphorus Rule and EFA as Federal regulations and amend them accordingly. EPA concluded this approach would not be appropriate for two reasons.

First, to the extent EPA would be promulgating as Federal regulations provisions of state water quality

standards that EPA has approved (or provisions associated with approved water quality standards but that are not themselves water quality standards), the CWA does not provide for such action. The CWA provides that when EPA approves a new or revised state water quality standard, “such standard shall thereafter be the water quality standard for the applicable waters of the State.” CWA section 303(c)(3). Only if EPA disapproves a state water quality standard or makes a determination that a new or revised water quality standard is necessary to meet the requirements of the Clean Water Act under section 303(c)(4)(B) and the state fails to make the necessary changes, does the Act direct EPA to promulgate such water quality standards for navigable waters of the state. There are many provisions of the Phosphorus Rule that EPA approved. EPA did not believe it would be appropriate to promulgate those provisions as Federal regulations.

Second, except for the disapproved provisions of the EFA amendments, EPA has not approved or disapproved the remaining provisions of the EFA (with one exception) as new or revised water quality standards under the Clean Water Act. Therefore, it would not be appropriate for EPA to promulgate such provisions as Federal water quality standards.

For these reasons, EPA concluded the best approach was to identify, through incorporation by reference, those provisions of the Phosphorus Rule and EFA that EPA disapproved and are therefore not applicable water quality standards for purposes of the CWA. EPA solicits comments on this approach.

### III. Statutory and Executive Order Reviews

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

This action 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 action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This proposed action merely clarifies the water quality standards concerning the phosphorus rule and the Amended EFA statute that are not water quality standards for purposes of the CWA and does not impose any information collection burden on anyone.

#### *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.

As a result of the disapproval action by EPA in December 2009, the Florida Department of Environmental Protection already needs to ensure that permits it issues do not implement the provisions identified in this rule which are not applicable water quality standards for purposes of the CWA. In doing so, the State will have a number of choices associated with permit writing. While Florida’s implementation of the rule might ultimately result in some new or revised permit conditions for some

dischargers, including small entities, EPA’s action today would not impose any of these as yet unknown requirements on small entities. Thus, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

#### *D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. This proposed action merely clarifies the water quality standards concerning the phosphorus rule and the Amended EFA and does not impose any burden on anyone. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

#### *E. Executive Order 13132 (Federalism)*

This action 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. This proposed action merely clarifies the water quality standards concerning the phosphorus rule and the Amended EFA and does not apply to any government other than the State of Florida.

#### *F. Executive Order 13175*

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000) because this is an action in which the EPA has no discretion, *i.e.*, EPA is mandated by the Court to take this action. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866 and because the Agency does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

#### *H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### *I. National Technology Transfer and 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. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed 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 (E.O.) 12898 (59 FR 7629 (Feb. 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. This action is not subject to E.O. 12898 because this proposed action merely clarifies the water quality standards concerning the phosphorus rule and the Amended EFA.

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

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

Dated: June 27, 2011.

**Lisa P. Jackson,**  
Administrator.

For the reasons set out in the preamble, EPA proposes to amend 40 CFR part 131 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.*

### **Subpart D—[Amended]**

2. Section 131.44 is added to read as follows:

#### **§ 131.44 Florida.**

(a) *Phosphorus Rule.* The document entitled “Corrected Florida Administrative Code 62–302.540: Water Quality Standards for Phosphorus Within the Everglades Protection Area,” (Phosphorus Rule) dated April 26, 2011 shall be added to this Subpart through an incorporation by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a). Copies of the document may be inspected and obtained from the docket associated with this rulemaking (Docket Number EPA–HQ–OW–2011–0515), at EPA’s Water Docket (Address: 1301 Constitution Avenue, NW., EPA West, Room B102, Washington, DC 20460, telephone number: 202–566–2426), or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to the following Web site [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.htm](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.htm). EPA adopts and identifies the portions of the document that have strikeout markings as portions of the Phosphorus Rule that EPA disapproved on December 3, 2009, and that are not applicable water quality standards for the purposes of the Clean Water Act. Remaining portions of the Phosphorus Rule that EPA had previously approved are applicable water quality standards for the purposes of the Clean Water Act but are not codified as Federal water quality standards.

(b) *Amended Everglades Forever Act.* The document entitled “Corrected Everglades Forever Act: Florida Statute 373.4592,” dated April 26, 2011 shall be added to this Subpart through an incorporation by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a). Copies

of the document may be inspected and obtained from the docket associated with this rulemaking (Docket Number EPA–HQ–OW–2011–0515), at EPA’s Water Docket (Address: 1301 Constitution Avenue, NW., EPA West, Room B102, Washington, DC 20460, telephone number: 202–566–2426 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to the following Web site: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). EPA adopts and identifies the portions of the document that have strikeout markings as portions of the statute that EPA disapproved on December 3, 2009, and that are not applicable water quality standards for the purposes of the Clean Water Act. Remaining portions of the statute that EPA had previously approved are applicable water quality standards for the purposes of the Clean Water Act but are not codified as Federal water quality standards.

[FR Doc. 2011–16616 Filed 6–30–11; 8:45 am]

**BILLING CODE 6560–50–P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

#### **49 CFR Parts 383 and 390**

[Docket No. FMCSA–2011–0146]

#### **Regulatory Guidance: Applicability of the Federal Motor Carrier Safety Regulations to Operators of Certain Farm Vehicles and Off-Road Agricultural Equipment**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice; extension of public comment period.

**SUMMARY:** FMCSA extends the public comment period for its May 31, 2011, notice concerning regulatory guidance on the applicability of the Federal Motor Carrier Safety Regulations to operators of certain farm vehicles and off-road agricultural equipment. The public comment period is extended from June 30, 2011, to August 1, 2011.

**DATES:** Comments on the notice must be received on or before August 1, 2011.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA–2011–0146 by any of the following methods

• **Web site:** <http://www.regulations.gov>. Follow the

instructions for submitting comments on the Federal electronic docket site.

• **Fax:** 1–202–493–2251.  
• **Mail:** Docket Management Facility; U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

• **Hand Delivery:** Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal Holidays.

**Instructions:** All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the “Public Participation” heading below. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the “Privacy Act” heading below.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to the ground floor, room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

**Privacy Act:** Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316) or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

**Public Participation:** The <http://www.regulations.gov> Web site is generally available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the “help” section of the <http://www.regulations.gov> Web site and also at the DOT’s <http://docketsinfo.dot.gov> Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and