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SUPPLEMENTARY INFORMATION: In FR Doc. 2011-22919 appearing on page 55561 in the **Federal Register** of Thursday, September 8, 2011, the following correction is made:

§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District.

■ 1. On page 55563, in the third column, in the third amendatory instruction, remove the words “line No. 63” and replace with “line No. 59”.

Dated: September 12, 2011.

Erin Ledford,

Acting Chief, Office of Regulations and Administrative Law (CG-0943), U.S. Coast Guard.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 132

[EPA-HQ-OW-2010-0492; FRL-9466-3]

RIN 2040-AF23

Final Withdrawal of Certain Federal Aquatic Life Water Quality Criteria Applicable to Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is withdrawing the federal aquatic life water quality criteria for chronic and acute copper and nickel, and chronic endrin and selenium applicable to certain waters of the Great Lakes System in Wisconsin. Wisconsin's revised and EPA-approved criteria adequately protect all waters of the State designated for aquatic life use at a level consistent with the federal requirements. As a result of this withdrawal, Wisconsin will continue to implement its EPA-approved aquatic life criteria.

DATES: This final rule is effective on October 17, 2011.

ADDRESSES: The EPA established a docket for this action under Docket ID No. EPA-HQ-OW-2010-0492. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publically available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publically available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Office of Water (OW) Docket Center. This Docket Facility is open from 8:30 a.m. to 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.

FOR FURTHER INFORMATION CONTACT: Francine Norling, U.S. EPA, Region 5, 77 W. Jackson Blvd., Chicago, IL 60604 (telephone: (312) 886-0271 or e-mail: norling.francine@epa.gov) or Sara Hilbrich, U.S. EPA Headquarters, Office of Science and Technology, 1200 Pennsylvania Avenue, NW., Mail Code 4305T, Washington, DC 20460 (telephone: (202) 564-0441 or e-mail: hilbrich.sara@epa.gov).

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I. Potentially Affected Entities

This rule withdraws federal water quality standards, specifically aquatic life criteria for chronic and acute copper and nickel and chronic endrin and selenium for Wisconsin surface waters designated for certain aquatic life uses in the Great Lakes System (described in 40 CFR part 132). As a result of this rule, Wisconsin will implement the following State-revised and EPA-approved aquatic life criteria: chronic and acute copper and nickel for all Wisconsin surface waters designated for aquatic life use; chronic endrin for Wisconsin surface waters designated for aquatic life use except waters designated as Warm Water Forage Fish and Warm Water Sportfish use; chronic selenium for Wisconsin surface waters designated for aquatic life use except waters designated as Limited Forage Fish use. Entities discharging copper, nickel, endrin or selenium to surface waters of Wisconsin could be affected by this rulemaking given that water quality standards are used to determine water quality based effluent limits in National Pollutant Discharge Elimination System (NPDES) permits, and may affect Clean Water Act (CWA) Section 404 dredge and fill permits, and other federal licenses and permits requiring CWA 401 certification. Table 1, below, provides examples of the types of NPDES-regulated entities that may ultimately be affected by the federal rule withdrawal.

TABLE 1—EXAMPLES OF ENTITIES POTENTIALLY AFFECTED BY THE FEDERAL RULE WITHDRAWAL

Category	Examples of potentially affected entities
Industry	Industries discharging to surface waters in Wisconsin designated by the State for aquatic life use.

TABLE 1—EXAMPLES OF ENTITIES POTENTIALLY AFFECTED BY THE FEDERAL RULE WITHDRAWAL—Continued

Category	Examples of potentially affected entities
Municipalities	Publicly-owned treatment works discharging to surface waters in Wisconsin designated by the State for aquatic life use.

If you have any questions regarding the applicability of this action to a particular entity, consult the person identified in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. Applicable Federal Statutory and Regulatory Requirements

In 1995, the EPA published the final *Water Quality Guidance for the Great Lakes System* (Guidance), required by CWA Section 118(c)(2) (33 U.S.C. 1268). Among other provisions, the Guidance identified minimum water quality standards to protect aquatic life as part of a comprehensive plan to restore the health of the Great Lakes System (40 CFR 132.3). Under CWA Section 118(c)(2), within two years of publishing the Guidance, Great Lakes States, including Wisconsin, were required to adopt provisions consistent with the Guidance into their water quality standards and NPDES permit programs. The regulation at 40 CFR 132.5(f) provides that, after review of a State's water quality standards submission, the EPA must either publish a notice of approval of the State's submission in the **Federal Register** or notify the State that the EPA has determined that all or part of its submission is inconsistent with the CWA and/or the Guidance, and identify any changes needed to obtain EPA approval. If the EPA notified the State of inconsistencies, then the State had 90 days to make the necessary changes. If the State failed to make the necessary changes, the EPA was required to publish a document in the **Federal Register** identifying the approved and disapproved elements of the submission and a final rule identifying the provisions of the Guidance that apply to the State.

B. Why is the EPA withdrawing certain federal aquatic life water quality criteria applicable to Wisconsin?

In 1997, Wisconsin adopted revised water quality standards to comply with the Guidance requirements at 40 CFR part 132. In October 2000, the EPA disapproved six of Wisconsin's revised aquatic life criteria including chronic and acute copper and nickel, and chronic endrin and selenium.

Subsequently the EPA published a final rule effective February 5, 2001, making the following aquatic life criteria, published at 40 CFR 132.6, effective for waters of the Great Lakes System in the State of Wisconsin: (1) Chronic and acute copper and nickel in Tables 1 and 2 of 40 CFR 132.6(f); (2) chronic endrin in Table 2 of 40 CFR 132.6(f); and (3) chronic selenium in Table 2 of 40 CFR 132.6(g).

In January 2008, Wisconsin began rulemaking to revise its water quality standards to address the EPA's disapproval of these aquatic life criteria. The Wisconsin Natural Resources Board adopted the State's revised criteria on June 24, 2008 and the Wisconsin Attorney General certified these rules on December 22, 2008. On May 4, 2009, EPA Region 5 received a letter from the Wisconsin Department of Natural Resources requesting approval of final revisions to Chapter NR 105 (Surface Water Quality Criteria and Secondary Values for Toxic Substances) of the Wisconsin Administrative Code (WAC).

Pursuant to CWA section 303(c)(3), the EPA is required to review and approve new and revised State water quality standards before such standards become effective for CWA purposes. The EPA found that Wisconsin's revised criteria, with the exception of chronic selenium for waters designated by Wisconsin as Limited Forage Fish use, satisfy the federal requirements for submittal of new or revised water quality standards to the EPA and are consistent with the CWA and the Guidance requirements. Therefore, the EPA approved Wisconsin's revised aquatic life criteria on July 1, 2009, with the exception of the chronic aquatic life criterion for selenium in waters designated by Wisconsin as Limited Forage Fish use.

The EPA's approval of Wisconsin's aquatic life criteria makes the federal criteria no longer necessary for compliance with the CWA and the Guidance. Therefore, the EPA determined that the following federal aquatic life criteria for waters of the Great Lakes System in Wisconsin may be withdrawn: chronic and acute copper and nickel for all aquatic life uses; chronic endrin for all aquatic life uses with the exception of waters designated by Wisconsin as Warm Water Forage Fish and Warm Water Sportfish use; and

chronic selenium for all aquatic life uses with the exception of waters designated by Wisconsin as Limited Forage Fish use.

C. Why is the EPA not withdrawing Wisconsin's chronic endrin aquatic life use criterion for waters designated as Warm Water Sportfish and Warm Water Forage Fish use, and chronic selenium aquatic life use criterion for waters designated as limited Forage Fish use?

The EPA is not withdrawing the federal chronic endrin aquatic life use criterion for waters of the Great Lakes System in Wisconsin designated as Warm Water Sportfish and Warm Water Forage Fish use, due to a State transcription error. While the EPA approved Wisconsin's revised chronic endrin aquatic life use criteria for all waters in the State of Wisconsin on July 1, 2009, the chronic aquatic life use criterion for endrin for waters designated as Warm Water Forage Fish and Warm Water Sportfish use published in Wisconsin's regulations at NR 105.06 (0.05 µg/L) is not identical to the criterion that Wisconsin submitted and that the EPA had approved (0.036 µg/L). The EPA is not withdrawing the federal chronic endrin criterion for these aquatic life uses until after Wisconsin concludes rulemaking to correct the criterion in the State's regulations.

The EPA is not withdrawing the federal chronic selenium aquatic life use criterion for waters of the Great Lakes System in Wisconsin designated for Limited Forage Fish use because the EPA took no action on Wisconsin's revised chronic selenium criterion for this aquatic life use in its July 1, 2009 action approving the other aquatic life criteria. Therefore, the federal aquatic life use criterion for chronic selenium will continue to apply to waters within the Great Lakes System of Wisconsin, designated as Limited Forage Fish use. Wisconsin calculated the chronic selenium criterion based on water column toxicity studies, rather than through dietary exposure, which currently available data indicates is the appropriate methodology to use. Because Wisconsin does not have an EPA-approved chronic aquatic life selenium criterion for Limited Forage Fish Waters, the EPA is not withdrawing the federal chronic aquatic

life selenium criterion for Wisconsin's Limited Forage Fish waters in this rule. Wisconsin may revise their chronic selenium criterion and submit it to the EPA for review and approval at a future date.

D. What are the applicable federal aquatic life water quality criteria that the EPA is withdrawing?

The EPA is withdrawing certain federal aquatic life criteria for Wisconsin included in the Guidance at 40 CFR 132.6. Specifically, the EPA is withdrawing the federal aquatic life use criteria for chronic and acute copper and nickel (40 CFR 132.6(f)) applicable to all waters of the Great Lakes System in Wisconsin designated for aquatic life uses. The EPA is also amending the federal chronic aquatic life criterion for endrin (40 CFR 132.6(f)) to apply exclusively to waters designated by Wisconsin as Warm Water Sportfish and Warm Water Forage Fish use, and

amending the federal chronic aquatic life criterion for selenium (40 CFR 132.6(g)) to apply exclusively to waters designated by Wisconsin as Limited Forage Fish use. As a result of this final rule withdrawal, Wisconsin will implement the EPA-approved aquatic life criteria under State law.

Wisconsin has tiered aquatic life uses and the State's EPA-approved aquatic life criteria revisions do not affect Wisconsin's designated uses included in Chapter NR 105 of the WAC. Based on the designated uses defined in NR 102.04(3) of the WAC, Wisconsin's aquatic life designated uses of Cold Water, Warm Water Sportfish, and Warm Water Forage Fish are consistent with the requirements of CWA Section 101(a)(2) for the protection and propagation of fish, shellfish, and wildlife. The Limited Forage Fish aquatic life use does not meet this requirement because these surface waters are capable of supporting only a

"limited community of forage fish and other aquatic life," based on "limited capacity and naturally poor water quality or habitat" (WAC, Chapter 102.04(3)(d)). The following section discusses and compares the calculations and criteria included in the EPA's federal regulations and those included in Wisconsin's revised criteria.

1. Acute Copper Aquatic Life Criteria Applicable to Cold Water, Warm Water Sportfish, Warm Water Forage Fish, Limited Forage Fish, and Limited Aquatic Life Designated Uses

Wisconsin adopted and the EPA reviewed and approved an acute copper aquatic life criteria equation applicable to all surface waters in Wisconsin designated for aquatic life use. The equation used by Wisconsin to calculate the acute copper aquatic life criteria results in a slightly higher value than the EPA equation at a given hardness (see Table 2).

TABLE 2—ACUTE COPPER CRITERIA EQUATION

[All aquatic life designated uses]

EPA criteria maximum concentration (µg/L)	Wisconsin acute toxicity criteria (µg/L)
CMC = $\exp(0.9422 \cdot \ln(\text{hardness})) - 1.700$	ATC = $\exp(0.9436 \cdot \ln(\text{hardness})) - 1.6036$

The difference between the EPA's and Wisconsin's intercept in the acute copper equation is due to the elimination of one of the most sensitive species from the criteria calculation (northern pikeminnow, genus *Ptychocheilus*) and inclusion of additional data for three species. Eliminating the *Ptychocheilus* data from the equation is scientifically defensible because *Ptychocheilus* is not native to Wisconsin and is not a surrogate for other Wisconsin taxa unrepresented in the data set. The northern pikeminnow is a type of minnow, and other minnows (fathead and bluntnose) found in Wisconsin are well-represented in the copper data set. Wisconsin's slope of 0.9436 is slightly different from the

EPA's 0.9422 slope due to Wisconsin's inclusion of additional data on three species (*Daphnia magna*, rainbow trout, and bluegill) that were not included in the EPA's 1985 slope calculation used in the Guidance. The EPA included these data in the 1995 criteria update, but did not recalculate the slope used in the 1985 EPA copper criteria document.

Wisconsin's method for deriving the acute copper criteria equation is an acceptable State-specific modification of the EPA's criteria, consistent with Wisconsin's methods for deriving criteria (WAC Chapter NR 105). The equation is scientifically sound and results in criteria that are protective of the use; therefore this equation is consistent with CWA Sections 101(a)(2)

and 303(c)(2), and 40 CFR Parts 131 and 132.

2. Chronic Copper Aquatic Life Criteria Applicable to Cold Water, Warm Water Sportfish, Warm Water Forage Fish, Limited Forage Fish, and Limited Aquatic Life Designated Uses

Wisconsin adopted and the EPA reviewed and approved a chronic copper aquatic life criteria equation applicable to all surface waters in Wisconsin designated for aquatic life use. The equation used by Wisconsin for calculating chronic aquatic life criteria for copper produces a slightly higher value than the EPA equation at a given hardness (see Table 3).

TABLE 3—CHRONIC COPPER CRITERIA EQUATION

[All aquatic life designated uses]

EPA criterion continuous concentration (µg/L)	Wisconsin chronic toxicity criteria (µg/L)
CCC = $\exp(0.8545 \cdot \ln(\text{hardness})) - 1.702$	CTC = $\exp(0.8557 \cdot \ln(\text{hardness})) - 1.6036$

The difference between the EPA's and Wisconsin's chronic copper equation intercept is primarily due to the elimination of one of the most sensitive

species from the federal criteria calculation (northern pikeminnow, genus *Ptychocheilus*), which is not native to Wisconsin. Wisconsin's

elimination of data for a non-native species that is not a surrogate for taxa that are unrepresented in the data set, is scientifically defensible. The northern

pikeminnow is a type of minnow, and other minnows (fathead and bluntnose) found in Wisconsin, are well-represented in the copper data set. Wisconsin's slope of 0.8557 is slightly different from the EPA's 0.8545 slope due to Wisconsin's inclusion of additional data on three species (*Daphnia magna*, rainbow trout, and bluegill) that were not included in the EPA's 1985 slope calculation used in the Guidance. The EPA included these data in the 1995 criteria update, but did not recalculate the slope used in the 1985 copper criteria document.

Wisconsin's method for deriving the chronic copper criteria equation is an

acceptable State-specific modification of the EPA's criteria, consistent with Wisconsin's methods for deriving criteria (WAC Chapter NR 105). The equation is scientifically sound and results in criteria that are protective of the use, therefore this equation is consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132.

3. Acute Nickel Aquatic Life Criteria Applicable to Cold Water, Warm Water Sportfish, Warm Water Forage Fish, Limited Forage Fish, and Limited Aquatic Life Designated Uses

Wisconsin adopted and the EPA reviewed and approved an acute nickel

aquatic life criteria equation applicable to all surface waters in Wisconsin designated for aquatic life use. The equation used by Wisconsin to calculate acute aquatic life criteria for nickel is identical to the equation contained in the Great Lakes Water Quality Guidance, 40 CFR part 132 as well as the EPA's CWA Section 304(a) criteria (see Table 4). The equation is scientifically sound and results in criteria that are protective of the use, therefore this equation is consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132.

TABLE 4—ACUTE NICKEL CRITERIA EQUATION
[All aquatic life designated uses]

EPA criteria maximum concentration (µg/L)	Wisconsin acute toxicity criteria (µg/L)
CMC = $\exp(0.846 \cdot \ln(\text{hardness})) + 2.255$	ATC = $\exp(0.846 \cdot \ln(\text{hardness})) + 2.255$

4. Chronic Nickel Aquatic Life Criteria Applicable to Cold Water, Warm Water Sportfish, Warm Water Forage Fish, Limited Forage Fish, and Limited Aquatic Life Designated Uses

Wisconsin adopted and the EPA reviewed and approved, two criteria

equations for chronic nickel for differing aquatic life uses (see Table 5).

TABLE 5—CHRONIC NICKEL CRITERIA EQUATIONS

EPA criterion continuous concentration (µg/L)	Wisconsin chronic toxicity criteria (µg/L): Cold water, warm water sportfish, warm water forage fish, and limited forage fish	Wisconsin chronic toxicity criteria (µg/L): Limited aquatic life
CCC = $\exp(0.846 \cdot \ln(\text{hardness})) + 0.0584$	CTC = $\exp(0.846 \cdot \ln(\text{hardness})) + .0591$	CTC = $\exp(0.846 \cdot \ln(\text{hardness})) + .4004$

The equation used by Wisconsin for calculating the chronic nickel criteria for Cold Water, Warm Water Sportfish, Warm Water Forage Fish, and Limited Forage Fish designated uses results in a value that is slightly higher than the resulting criterion from the EPA's equation at a given hardness. This difference is due to Wisconsin's use of a slightly different intercept and acute-chronic ratio for the *Cladoceran* test data. The equation for the Limited Aquatic Life classification has a different value for the intercept because data for the fathead minnow, which are not expected to have a fish community in Limited Aquatic Life use waters, were not included in the calculation.

For the Cold Water, Warm Water Sportfish, Warm Water Forage Fish, and Limited Forage Fish water classifications, Wisconsin's chronic nickel criteria equation is scientifically

defensible and results in criteria protective of the use and therefore is consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132. For Wisconsin's equation for Limited Aquatic Life water classification, the elimination of data for a non-resident species is an appropriate State-specific modification of the EPA's equation. Wisconsin's equation is scientifically sound and results in criteria that are protective of the use, and is therefore consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132.

5. Chronic Endrin Aquatic Life Criteria Applicable to Cold Water, Warm Water Sportfish, Warm Water Forage Fish, Limited Forage Fish, and Limited Aquatic Life Designated Uses

Wisconsin adopted and the EPA reviewed and approved a chronic endrin criterion for Cold Water, Warm

Water Forage Fish, and Warm Water Sportfish classifications that is identical to the EPA's criterion in the Guidance (40 CFR part 132). The criterion is scientifically sound and protective of the use, therefore this criterion is consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132 (see Table 6). However, due to a transcription error, the chronic endrin aquatic life use criterion for waters designated as Warm Water Forage Fish and Warm Water Sportfish use published in Wisconsin's regulations NR 105.06 (0.05 µg/L) is not identical to the criterion that Wisconsin submitted to the EPA and which the EPA approved (0.036 µg/L). Therefore, the EPA is not withdrawing the federal chronic endrin criterion for these uses until after Wisconsin concludes rulemaking to correct the criterion in the State's regulations.

TABLE 6—CHRONIC ENDRIN AQUATIC LIFE CRITERIA

EPA criterion continuous concentration (µg/L)	Wisconsin chronic toxicity criteria (µg/L): Cold water, warm water forage fish, and warm water sportfish	Wisconsin chronic toxicity criteria (µg/L): Limited forage fish and limited aquatic life
0.036	0.036	0.050

Wisconsin's criterion for Limited Forage Fish and Limited Aquatic Life waters is higher than the EPA's criterion because three of the four most sensitive genera used to calculate the EPA's criterion do not exist in these waters in Wisconsin, and were therefore excluded from the State's calculation. These species are *Perca* (yellow perch), *Lepomis* (bluegill), and *micropterus* (largemouth bass). Instead, Wisconsin used data for the following genera for the endrin criterion calculation for Limited Forage Fish Waters: *Pteronarcys* (stonefly), which was also used by the EPA; *Cyprinus* (carp); *Piemphales* (fathead minnow); and *Pteronarcella* (stonefly). When the fathead minnow data set was removed from the Limited Aquatic Life calculation, the calculated criterion was lower than the calculated criterion for Limited Forage Fish waters.

Under Wisconsin's rules NR 105.05(1)(a)(9), when this occurs, the Limited Aquatic Life criterion can be set equal to the Limited Forage Fish criterion if the species used to calculate the Limited Aquatic Life criterion are already included in the database used to calculate the Limited Forage Fish criterion. Therefore, Wisconsin established the Limited Aquatic Life criterion for endrin at a level that provides protection equal to the level for the Limited Forage Fish criterion.

Wisconsin's method for deriving the chronic endrin criterion for Limited Aquatic Life and Limited Forage Fish waters is an acceptable State-specific modification of the EPA's criterion, consistent with Wisconsin's methods for deriving criteria (Chapter NR 105 of the WAC). The criterion is scientifically sound and protective of the use,

therefore this criterion is consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132.

6. Chronic Selenium Aquatic Life Criteria Applicable to Cold Water, Warm Water Sportfish, Warm Water Forage Fish, Limited Forage Fish, and Limited Aquatic Life Designated Uses

The EPA reviewed and approved Wisconsin's revised chronic selenium criterion for Cold Water, Warm Water Sportfish, and Warm Water Forage Fish classifications, which are identical to the EPA's chronic selenium criterion in 40 CFR part 132 (see Table 7). The criterion is scientifically sound and protective of the uses, and is therefore consistent with CWA Section 101(a)(2) and 303(c)(2), and 40 CFR parts 131 and 132.

TABLE 7—CHRONIC SELENIUM AQUATIC LIFE CRITERIA

EPA Criterion continuous concentration (µg/L)	Wisconsin chronic toxicity criteria (µg/L): Cold water, warm water sportfish, warm water forage fish	Wisconsin chronic toxicity criteria (µg/L): Limited forage fish, limited aquatic life
5.0	5.0	46.5

Wisconsin did not adopt the EPA's chronic aquatic life criterion for selenium, found in 40 CFR Part 132, for Limited Aquatic Life waters. Wisconsin's basis for this decision is that Limited Aquatic Life waters only support an invertebrate community, and the EPA's criterion was based on observed effects of selenium on sportfish (bluegills) in field studies (Belews Lake, North Carolina, and others). Instead, Wisconsin calculated a criterion for Limited Aquatic Life waters based on toxicity studies listed in the EPA's 1987 selenium aquatic life criteria document (selenite, +4). Wisconsin's value of 46.5 µg/L is slightly different than the EPA's calculated criterion of 44.72 µg/L, because Wisconsin removed the data for two saltwater species used in the EPA's calculation.

Wisconsin's chronic aquatic life selenium criterion of 46.5 µg/L for Limited Aquatic Life waters is consistent with the protection provided for aquatic life in Limited Aquatic Life waters, for several reasons. First, two of the three freshwater studies used to

calculate the criterion, in accord with the 1985 Guidelines, were conducted on invertebrates (*Daphnia magna* and *Daphnia pulex*). Wisconsin followed their State procedures for deriving aquatic life criteria, using these toxicity studies (Chapter NR 105 of the WAC). Second, current literature on selenium states: "The most important aspect of selenium residues in aquatic food chains is not direct toxicity to the organisms themselves, but rather the dietary source of selenium they provide to fish and wildlife species that feed on them".¹ In the case of Limited Aquatic Life waters, there are no fish that feed on the invertebrates, and there is currently no information available to determine effects on wildlife from eating these organisms. No new studies have been conducted with invertebrates that would provide a scientific basis to refute the 1987 invertebrate toxicity

studies reported in the EPA's 1987 selenium criteria document.

For the above reasons, the EPA approved Wisconsin's chronic selenium criterion for Limited Aquatic Life waters as an acceptable State-specific modification of the EPA's criterion, consistent with Wisconsin's methods for deriving criteria. The criterion is scientifically sound and protective of the use, therefore this criterion is consistent with CWA Sections 101(a)(2) and 303(c)(2), and 40 CFR Parts 131 and 132.

Wisconsin did not adopt the EPA's chronic aquatic life selenium criterion of 5 µg/L, found in 40 CFR Part 132, for Limited Forage Fish waters. Wisconsin's basis for not adopting the EPA's criterion is that Limited Forage Fish waters only support forage fish and invertebrates, and the EPA's criterion was based on observed effects of selenium on sportfish (bluegill) in field studies. Instead, Wisconsin calculated a chronic selenium criterion for Limited Forage Fish waters based on toxicity studies listed in the EPA's 1987

¹ Lemly, A Dennis. 2002. Selenium Assessment in Aquatic Ecosystems: A Guide for Hazard Evaluation. Springer Series on Environmental Management. Page 23.

selenium aquatic life criteria document (selenite, +4). The EPA did not use these laboratory toxicity studies as the final basis for the recommended national selenium criterion of 5 µg/L because these studies were based on water column-only exposure to selenium. Given the available data showing the importance of dietary exposure, the EPA's criteria recommendations are based on field studies that account for bioaccumulation through the food chain as the main route of the exposure. The available data indicate that the primary route of exposure to all fish species is dietary. Consequently, a water column exposure-based criterion, such as the criterion adopted by Wisconsin for Limited Forage Fish waters, may not protect aquatic life in these waters. Therefore, the EPA did not act on Wisconsin's revised chronic selenium criterion for Limited Forage Fish waters in its July 1, 2009 action approving the other aquatic life criteria. Because Wisconsin does not have an EPA-approved chronic aquatic life selenium criterion for Limited Forage Fish Waters, the EPA is not withdrawing the federal chronic aquatic life selenium criterion for these waters. Therefore, the federal criteria for chronic selenium will continue to apply to Wisconsin's Limited Forage Fish waters.

III. Statutory and Executive Order Reviews

A. Executive Order 12866 (Regulatory Planning and Review)

This action withdraws federal requirements applicable to Wisconsin 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 Office of Management and Budget (OMB) review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden because it is administratively withdrawing Federal requirements that are no longer needed in Wisconsin. It does not include any information collection, reporting or recordkeeping requirements. However, the OMB has previously approved the information collection requirements contained in the existing regulations 40 CFR Part 131 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB

control number 2040-0049. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This rule imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under UMRA Section 202, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, UMRA Section 205 generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA Section 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA Section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome

alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under UMRA Section 203 a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Tribal, or local governments or the private sector because it imposes no enforceable duty on any of these entities. Thus, this rule is not subject to the requirements of UMRA Sections 202 and 205 for a written statement and small government agency plan. Similarly, the 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 the EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

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

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

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) the EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless

the Federal Government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or the EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

The EPA has concluded that this action may have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law. Wisconsin's revised and EPA-approved aquatic life criteria are identical to, or only slightly less stringent than, the federal criteria being withdrawn in this rule. In 2009 the EPA determined that Wisconsin's revised criteria, with the exception of the chronic aquatic life criterion for selenium in waters designated as Limited Forage Fish use, adequately protect all waters of the State designated for aquatic life use at a level consistent with the Guidance and CWA requirements. Therefore, tribal consultation on this rule is unnecessary.

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

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

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

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

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

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, 12(d)(15 U.S.C. 272 note) directs the 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 the 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, the 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.

The EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations for several reasons. First, this rule pertains to aquatic life use criteria only which, based on current science and the EPA's CWA Section 304(a) recommended criteria, the EPA has previously determined are protective of the applicable aquatic life designated uses. Second, Wisconsin's revised and EPA-approved aquatic life criteria apply to all waters in the State designated for certain aquatic life uses. For these reasons, the EPA believes that this action will not disproportionately affect any one group over another in the State of Wisconsin.

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. The 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**, however this action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will become effective 30 days after publication in the **Federal Register** as provided under the Administrative Procedure Act.

List of Subjects in 40 CFR Part 132

Environmental protection, Administrative practice and procedure, Great Lakes, Indian lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: September 8, 2011.

Lisa P. Jackson,
Administrator.

For the reasons set out in the preamble, 40 CFR part 132 is amended as follows:

PART 132—WATER QUALITY GUIDANCE FOR THE GREAT LAKES SYSTEM

■ 1. The authority citation for 40 CFR part 132 continues to read as follows:

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

■ 2. In § 132.6 paragraphs (f) and (g) are revised to read as follows:

§ 132.6 Application of part 132 requirements in Great Lakes States and Tribes.

* * * * *

(f) Effective December 6, 2000, the chronic aquatic life criterion for endrin in Table 2 of this part shall apply to the waters of the Great Lakes System in the State of Wisconsin designated by Wisconsin as Warm Water Sportfish and Warm Water Forage Fish aquatic life use.

(g) Effective February 5, 2001, the chronic aquatic life criterion for selenium in Table 2 of this part shall apply to the waters of the Great Lakes System in the State of Wisconsin

designated by Wisconsin as Limited Forage Fish aquatic life use.

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[FR Doc. 2011-23817 Filed 9-15-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA-HQ-OPP-2009-0609; FRL-8889-2]

Bacillus thuringiensis eCry3.1Ab Protein in Corn; Temporary Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends the effective date for a temporary exemption from the requirement of a tolerance for residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn, in or on the food or feed commodities of corn; corn, field; corn, sweet; and corn, pop, when used as a plant-incorporated protectant in accordance with the terms of Experimental Use Permit (EUP) No. 67979-EUP-8. Syngenta Seeds, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting to extend the existing temporary tolerance exemption for *Bacillus thuringiensis* eCry3.1Ab protein in corn that was set to expire on March 1, 2013. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn under the FFDCA. The temporary tolerance exemption now expires on December 31, 2013.

DATES: This regulation is effective September 16, 2011. Objections and requests for hearings must be received on or before November 15, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2009-0609. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are

available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT:

Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8715; e-mail address: mendelsohn.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 174 through the Government Printing Office's e-CFR site at http://ecfr.gpoaccess.gov/cgi/t/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation

and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2009-0609 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 15, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA-HQ-OPP-2009-0609, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- **Mail:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

II. Background and Statutory Findings

In the **Federal Register** of June 8, 2011 (76 FR 33183) (FRL-8874-8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 1G7868) by Syngenta Seeds, Inc., P.O. Box 12257, Research Triangle Park, NC 27709. The petition requested that 40 CFR part 174 be amended by extending the effective date of an existing temporary exemption from the requirement of a tolerance for residues of *Bacillus thuringiensis* eCry3.1Ab protein in corn. This notice referenced a summary of the petition prepared by the petitioner, Syngenta Seeds, Inc., which is available in the docket via