

transferred to the Board, in which case the revocation request should be filed with the Board. As of the date of receipt of the revocation, any covered claims will be processed in the same manner as if the participant had not elected to participate in the Initiative.

(c) *Implied revocation.* The failure of a participant to meet the terms of these rules, as outlined in the executed Agreement and Waiver of Rights, will have the same result as if the participant had expressly revoked his or her participation in the Initiative. As of the date of the action constituting such implied revocation, any covered claims will be processed in the same manner as if the participant had not elected to participate in the Initiative. Grounds for implied revocation of participation include, but are not limited to:

(1) The failure of the participant or representative, as appropriate, to comply with any of the time limits set forth in § 20.1504(a) of this part;

(2) The failure to waive initial consideration by the agency of original jurisdiction of any evidence obtained by VA that was not considered in the Statement of the Case;

(3) A request by a participant or representative for an extension of any of the time limits set forth in § 20.1504(a) of this part, unless a motion for good cause is granted, as described by paragraph (e) of this section; and

(4) Any other failure on the part of the participant to comply with the terms of the Agreement and Waiver of Rights, as determined by VA.

(d) *Death of participant.* If a participant dies while his or her claim is being processed, participation in the Initiative will be deemed revoked.

(e) *Extensions.* Extensions of any of the time limits described in this subpart may only be granted when the participant demonstrates on motion that there is good cause for the extension request. At no time may time periods be extended beyond those provided by law to all claimants and appellants. Examples of good cause include, but are not limited to, illness of the participant or the representative of such severity that precludes action during the period; death of an individual representative; illness or incapacity of an individual representative that renders it impractical for a participant to continue with him or her as representative; or withdrawal of an individual representative. Motions for extensions must be filed prior to the expiration of the time period for which a motion is being requested. Motions must be in writing, and filed with the participating VA regional office that has jurisdiction over the claim, unless the case has been

certified and transferred to the Board, in which case the motion must be filed with the Board. Motions must include the name of the participant, the applicable Department of Veterans Affairs file number; and an explanation as to why the extension request is being made.

(Authority: 38 U.S.C. 501(a))

#### **§ 20.1510 Rule 1510. Termination of the Initiative.**

VA may terminate the Initiative at any time. In the event of such termination, VA will notify participants and their representatives in writing and inform them that any covered claims will be processed from the date of termination in the same manner as if the participant had not elected to participate in the Initiative.

(Authority: 38 U.S.C. 501(a))

[FR Doc. E8-26310 Filed 11-4-08; 8:45 am]

BILLING CODE 8320-01-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 131**

[EPA-HQ-OW-2008-0495; FRL-8737-9]

#### **Withdrawal of the Federal Water Quality Standards Use Designations for Soda Creek and Portions of Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River in Idaho**

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

**ACTION:** Final rule; Withdrawal of direct final rule.

**SUMMARY:** EPA is promulgating the withdrawal of the Federal water quality standards designating cold water biota uses for Soda Creek and portions of Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River in Idaho. EPA published a direct final rule with a parallel proposal for this action on August 19, 2008. EPA is withdrawing the direct final rule prior to its effective date because EPA received comments that could be viewed as adverse. The Federal water quality standards designating cold water biota uses are no longer necessary since EPA approved Idaho's adopted uses that result in protection for cold water biota. EPA is also promulgating the withdrawal of the water quality standards variance provision applicable to these uses, because this provision is no longer necessary given the withdrawal of the Federal water quality standards designating these uses.

**DATES:** Effective November 5, 2008, EPA withdraws the direct final rule published at 73 FR 48300, on August 19, 2008. The effective date of this final rule is December 5, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OW-2008-0495. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed on the Web site, 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at two docket facilities. The OW Docket Center is open from 8:30 until 4:30 p.m., 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, and 1301 Constitution Avenue, NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744. Publicly available docket materials are also available in hard copy at U.S. EPA, Region 10, and 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Docket materials can be accessed from 9 a.m. until 3 p.m., Monday through Friday, excluding legal holidays. The telephone number is (206) 553-1834.

#### **FOR FURTHER INFORMATION CONTACT:**

Danielle Salvaterra, U.S. EPA Headquarters, Office of Water, Mailcode: 4305T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 202-564-1631; fax number: 202-566-0409; e-mail address: [salvaterra.danielle@epa.gov](mailto:salvaterra.danielle@epa.gov) or Lisa Macchio, U.S. EPA, Region 10, Mailcode: OWW-131, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101; telephone number: 206-553-1834; fax number: 206-553-0165; e-mail address: [macchio.lisa@epa.gov](mailto:macchio.lisa@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA is promulgating the withdrawal of the Federal water quality standards designating cold water biota uses for Soda Creek and portions of Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River in Idaho. EPA published the proposal for this final rulemaking on August 19, 2008. EPA is taking further action to withdraw a direct final rule that EPA published on

August 19, 2008 (73 FR 48300). We stated in that direct final rule that if we received adverse comment by September 18, 2008, the direct final rule would not take effect, and we would publish a timely withdrawal in the **Federal Register**. EPA received two comments which could be viewed as adverse comments. Importantly, because the comments when considered by EPA did not result in a change in EPA's position, the direct final rule would have resulted in the same action EPA is taking by this final rule. As stated in the direct final rule and the parallel proposed rule, we have not instituted a second comment period on this action.

In July 1997, EPA promulgated a Federal rule designating uses for water bodies in the State of Idaho, including the designation of cold water biota for Soda Creek, and portions of Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River, with the exception of any portion in Indian country (62 FR 41183, July 31, 1997). In March 2000, Idaho adopted a revised use for a segment of Blackfoot River, which changed from "Protected for Future Use" to undesignated. In Idaho, undesignated waters are protected for all recreational use in and on the water and for the propagation of fish, shellfish, and wildlife (IDAPA 58.01.02.101.01). In March 2002, Idaho

adopted a use designation of cold water biota for segments of Canyon Creek and South Fork Coeur d'Alene River. In March 2006, Idaho adopted a revised use for Soda Creek, which changed from "NONE" to undesignated. As described in the undesignated surface waters provision of Idaho's Water Quality Standards (IDAPA 58.01.02.101.01.a), the Idaho Department of Environmental Quality (IDEQ) applies cold water aquatic life criteria to undesignated waters because it is presumed that most waters in the State will support cold water aquatic life. Thus, cold water aquatic life criteria now apply to Soda Creek and the segment of the Blackfoot River. EPA approved Idaho's revised water quality standards for segments of Canyon Creek and South Fork Coeur d'Alene River on June 24, 2005, and for Soda Creek on August 15, 2006. EPA approved Idaho's revised water quality standards for the segment of the Blackfoot River, except for any portion in Indian country, on August 22, 2006. Thus, the Federal water quality standards designating Soda Creek and portions of Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River for cold water biota use (40 CFR 131.33(b)) are no longer necessary, and EPA is promulgating the withdrawal of these standards with this action. EPA is also promulgating the withdrawal of the

water quality standards variance provision applicable to these uses (40 CFR 131.33(d)), because this provision is no longer necessary given the withdrawal of the Federal water quality standards designating these uses.

**I. What Entities May Be Affected by This Action?**

Citizens concerned with water quality in Idaho may be interested in this rulemaking. Entities discharging pollutants to Soda Creek, Canyon Creek, South Fork Coeur d'Alene, and Blackfoot River in Idaho could be indirectly affected by this rulemaking because water quality standards are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits. Because this action withdraws the Federal water quality standards designating cold water biota uses that are no longer necessary since EPA approved Idaho's adopted uses that result in protection for cold water biota, the effect of this rulemaking may only occur when entities seek variances to water quality standards. Entities seeking variances from use designations on these waters will now apply to the state, and EPA will act on the state's decision to grant the variance.

Categories and entities that may ultimately be affected include:

Category	Examples of potentially affected entities
Industry .....	Industries discharging pollutants to Soda Creek, Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River in Idaho.
Municipalities .....	Publicly owned treatment works discharging pollutants to Soda Creek, Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River in Idaho.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES regulated entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action.

**II. Background**

On July 31, 1997, pursuant to section 303(c) of the Clean Water Act (CWA), EPA promulgated water quality standards for Idaho, which designated several water body segments for cold water biota use. These segments included: a segment of the Blackfoot River, then identified as USB 360—Equalizing Dam to mouth (with the exception of any portion in Indian country); a segment of Canyon Creek (segment PB 121)—below mining impact; a segment of South Fork Coeur d'Alene River (segment PB 140S)—Daisy Gulch to mouth; and Soda Creek (segment BB 310)—source to mouth.

*A. Blackfoot River:* In March 2000, the Idaho Legislature adopted revised water quality standards, providing an undesignated use for the segment of the Blackfoot River that the Federal rule addressed (IDAPA 58.01.02.150.09). In Idaho, undesignated waters are protected for all recreational use in and on the water and for the propagation of fish, shellfish, and wildlife (IDAPA 58.01.02.101.01). Given the flow limitations on the Blackfoot River segment, IDEQ removed the aquatic life use designation of "Protected for Future Use" from the Blackfoot River segment and left the use undesignated so that a more appropriate aquatic use designation may be described and added to Idaho water quality standards in the future. As described in the undesignated surface waters provision (IDAPA 58.01.02.101.01.a), IDEQ applies cold water aquatic life criteria to undesignated waters because it is presumed that most waters in the State

will support cold water aquatic life. As EPA stated in its approval letter of August 22, 2006, EPA considers Idaho's revision to provide a default cold water aquatic life use designation for the Blackfoot River segment, except for any portion in Indian country. EPA would consider any change in the level of protection afforded to the Blackfoot River segment to be a revision to Idaho's water quality standards, subject to EPA review pursuant to 40 CFR Part 131. The water quality standards revision also included a reformatting and renumbering of the Water Body/Basin Designation Tables and the segment of the Blackfoot River previously identified as USB 360 (Equalizing Dam to mouth) was renumbered to US-1 (Fort Hall Main Canal diversion to mouth), which is within the Blackfoot Subbasin of the Upper Snake Basin. Thus, cold water aquatic life criteria now apply to the US-1 segment of the Blackfoot River, which was formerly

identified as USB 360. EPA approved Idaho's revision, except for any portion in Indian country, on August 22, 2006. The 1997 promulgation establishing the Federal water quality standards designating uses for Blackfoot River did not apply to waters in Indian country; likewise, EPA's approval of the state's designated use for Blackfoot River excludes waters in Indian country.

**B. Canyon Creek and South Fork Coeur d'Alene River:** On March 15, 2002, the Idaho Legislature adopted revised water quality standards, including the cold water biota designated use for Canyon Creek, which was previously identified as PB 121 (below mining impact) and is now renumbered and renamed segment P-14 (from and including Gorge Gulch to mouth); and South Fork Coeur d'Alene River, which was previously identified as segment PB 140S and is now renumbered and includes two segments: Segment P-1 (Canyon Creek to mouth) and segment P-11 (from and including Daisy Gulch to Canyon Creek) (IDAPA 58.01.02.110.09). Canyon Creek and the South Fork Coeur d'Alene River are within the South Fork Coeur d'Alene River Subbasin of the Panhandle Basin. Canyon Creek in its entirety, including segments P-14 (from and including Gorge Gulch to mouth) and P-15 (source to Gorge Gulch), is designated for cold water biota. The South Fork Coeur d'Alene River is also designated for cold water biota use in its entirety; the South Fork Coeur d'Alene River upstream of Daisy Gulch (segment P-13—source to Daisy Gulch) was already designated as a cold water biota use. When the State first established its water quality standards, it included the phrase "below mining impact" to identify a number of stream segments in order to account for the lingering adverse environmental effects of numerous abandoned mines in the State. EPA recognized the concerns of the State and used the same terminology in its promulgation of Federal standards on July 31, 1997. EPA approved Idaho's revisions on June 24, 2005.

**C. Soda Creek:** In March 2006, the Idaho Legislature adopted revised water quality standards, removing the use designation of "NONE" and providing an undesignated use for Soda Creek. In Idaho, undesignated waters are protected for all recreational use in and on the water and for the propagation of fish, shellfish, and wildlife (IDAPA 58.01.02.101.01). Soda Creek had been identified as segment BB 310 (source to mouth) and is now renumbered and includes three segments: segments B-23 (Soda Creek Reservoir Dam to Alexander Reservoir), B-24 (Soda Creek

Reservoir), and B-25 (source to Soda Creek Reservoir) in the South Fork Clearwater Subbasin of the Clearwater Basin (IDAPA 58.01.02.160.02). IDEQ initially proposed that Soda Creek be designated for coldwater aquatic life use. However, due to a lack of data, particularly water temperature records, showing that cold water aquatic life criteria were met, Soda Creek was left undesignated. As described in the undesignated surface waters provision (IDAPA 58.01.02.101.01.a), IDEQ applies cold water aquatic life criteria to undesignated waters because it is presumed that most waters in the State will support cold water aquatic life. Thus, cold water aquatic life criteria now apply to Soda Creek. EPA approved Idaho's revision on August 15, 2006. As EPA stated in this approval letter, EPA considers Idaho's revision to provide a default cold water aquatic life use designation for Soda Creek. EPA would consider any change in the level of protection afforded to Soda Creek to be a revision to Idaho's water quality standards, subject to EPA review pursuant to 40 CFR Part 131.

**D. EPA-approved Use Designations and Criteria:** For Blackfoot River (US-1) and Soda Creek (B-23, B-24, and B-25), the State now applies an undesignated use that is practically equivalent to the aquatic life use established by EPA in its July 31, 1997, rulemaking because cold water biota criteria apply. Specifically, Idaho's undesignated surface waters provision states (IDAPA 58.01.02.101):

"Surface waters not designated in Sections 110 through 160 shall be designated according to Section 39-3604, Idaho Code, taking into consideration the use of the surface water and such physical, geological, chemical, and biological measures as may affect the surface water. Prior to designation, undesignated waters shall be protected for beneficial uses, which includes all recreational use in and on the water and the protection and propagation of fish, shellfish, and wildlife, wherever attainable.

a. Because [IDEQ] presumes most waters in the state will support cold water aquatic life and primary or secondary contact recreation beneficial uses, [IDEQ] will apply cold water aquatic life and primary or secondary contact recreation criteria to undesignated waters unless Sections 101.01.b and 101.01.c. are followed.

b. During the review of any new or existing activity on an undesignated water, [IDEQ] may examine all relevant data or may require the gathering of relevant data on beneficial uses; pending determination in Section 101.01.c. existing activities will be allowed to continue.

c. If, after review and public notice of relevant data, it is determined that beneficial uses in addition to or other than cold water aquatic life and primary or secondary contact recreation are appropriate, then [IDEQ] will:

- i. Complete the review and compliance determination of the activity in context with the new information on beneficial uses, and
- ii. Initiate rulemaking necessary to designate the undesignated water, including providing all necessary data and information to support the proposed designation."

For Canyon Creek (P-14) and South Fork Coeur d'Alene River (P-1 and P-11), the State now applies an aquatic life use designation that is the same as the one established by EPA in its July 31, 1997 rulemaking ("cold water biota"). Therefore, withdrawing the Federal water quality standards designating these uses will not result in a change in the level of protection afforded to Soda Creek, Canyon Creek, South Fork Coeur d'Alene River, or Blackfoot River.

### III. Withdrawal of Federal Water Quality Standards

#### A. Proposal

On August 19, 2008 (73 FR 48351), EPA proposed to withdraw the Federal water quality standards designating Soda Creek and portions of Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River for cold water biota use, on the grounds that these Federal standards are no longer necessary, in light of Idaho's subsequent revisions to its state water quality standards.

#### B. Comments

One commenter was concerned that the proposed withdrawal of Federal water quality standards would reduce water quality monitoring requirements for Soda Creek and the pertinent portions of Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River. However, EPA's withdrawal of Federal water quality standards neither removes nor imposes any requirements regarding water quality monitoring for these waters. EPA's final rule only removes the Federal use designation for the waters. State water quality standards identical or equivalent to those being withdrawn have been adopted by Idaho and have been approved by EPA. Therefore, the Federal water quality standards are no longer necessary.

Another commenter believed it should be made clear that site-specific aquatic life criteria for lead, zinc, and cadmium, which can be found at IDAPA 58.01.02.284, apply to Canyon Creek and South Fork Coeur d'Alene River. EPA agrees, and has revised the preamble to this rule accordingly. The commenter also noted an additional typographical error, which EPA has corrected in the final rule.

#### C. Final Rule

EPA is promulgating, as proposed, the rule to withdraw the Federal water

quality standards that designated uses for Soda Creek and portions of Canyon Creek, South Fork Coeur d'Alene River, and Blackfoot River. For the reasons set forth in Section II, EPA's action does not change the water quality criteria that apply to these water bodies. Idaho's water quality criteria that provide protection for the cold water aquatic life use are found in several sections of Idaho's water quality standards. Specifically, the general surface water criteria applicable to all surface waters in Idaho are provided in IDAPA 58.01.02.200, and numeric criteria for toxic substances for waters designated for aquatic life use apply per IDAPA 58.01.02.210.01.a. IDAPA 58.01.02.250 provides additional aquatic life criteria applicable to the segments from which the Federal water quality standards are being withdrawn, including general criteria for pH and dissolved gas that apply to all aquatic life use designations (IDAPA 58.01.02.250.01), as well as cold water criteria for dissolved oxygen, temperature, ammonia (acute and chronic), and turbidity that apply to waters designated for cold water aquatic life (IDAPA 58.01.02.250.02). IDAPA 58.01.02.284 provides site-specific aquatic life criteria for lead, zinc, and cadmium that apply in Canyon Creek and South Fork Coeur d'Alene River.

#### **IV. Withdrawal of Water Quality Standards Variance Provision**

When, in July 31, 1997, EPA originally promulgated Federal water quality standards designating uses for Idaho waters (62 FR 41162), EPA also included a water quality standards variance provision (40 CFR 131.33(d)) authorizing the EPA Region 10 Regional Administrator to grant variances from the Federal water quality standards that designated the cold water biota uses. Because this final rule removes the Federal water quality standards designating these uses, provision 40 CFR 131.33(d) is no longer necessary and is also being withdrawn. EPA received no comments on the portion of the proposed rule withdrawing the water quality standards variance provision. EPA is therefore promulgating, as proposed, this portion of the rule. Idaho has adopted its own water quality standards variance provision (IDAPA 58.01.02.260), which was approved by EPA on June 25, 1996.

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

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

This rule withdraws Federal requirements applicable to Idaho and

imposes no regulatory requirements 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. The rule imposes no additional cost on the regulated community because it will not change the level of environmental protection already achieved. The rule imposes only minimal additional effort on the State of Idaho as the regulator, because entities seeking variances from use designations will now apply to the state instead of to EPA. Thus, it has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order (EO).

##### *B. Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), because it is administratively withdrawing Federal requirements that no longer need to apply to Idaho.

##### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of a rule that is 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 rule 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 rule 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 (UMRA), Public Law 104-4 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

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

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

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an

accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This rule 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 rule imposes no regulatory requirements on any State, Tribal, or local government. The rule imposes only minimal additional effort on the State of Idaho as the regulator, because entities seeking variances from use designations will now apply to the state instead of to EPA. Thus, Executive Order 13132 does not apply to this rule.

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

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

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

This rule is not subject to EO 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant as defined in EO 12866, and EPA has no reason to believe the environmental health or safety risks

addressed by this rule 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 EO 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it does not affect the level of protection provided to human health or the environment.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small

Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a “major rule” as defined by 5 U.S.C. 804(2) and will be effective on December 5, 2008.

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

Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control, Water quality standards.

Dated: October 30, 2008.

**Stephen L. Johnson,**  
*Administrator.*

■ Accordingly, the amendments to the rule published on August 19, 2008 (73 FR 48300) are withdrawn as of November 5, 2008.

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

**PART 131—WATER QUALITY STANDARDS**

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

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

**§ 131.33 [Amended]**

■ 2. Section 131.33 is amended by removing and reserving paragraph (b) and by removing paragraph (d).

[FR Doc. E8–26402 Filed 11–4–08; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA–HQ–OPP–2008–0571; FRL–8386–1]

**Silane, trimethoxy[3-(oxiranylmethoxy)propyl]-, hydrolysis products with silica; Tolerance Exemption**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a