AD and the corrective action required in paragraph (f)(2) of this AD if already done before the effective date of this AD following British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, original issue dated April 29, 2009; and BEA Systems All Operator Message: Ref 09–014J–1, issue 1, dated July 31, 2009.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4138; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, *Attn:* Information Collection Clearance Officer, AES–200.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2011–0016, dated February 1, 2011; British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, original issue dated April 29, 2009; British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32–JA090240, Revision 1, dated January 18, 2010; and BAE Systems All Operator Message: Ref 09–014J–1, issue 1 dated July 31, 2009, for related information. For service information related to this AD, contact BAE Systems (Operations) Ltd, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; *telephone:* +44 1292 675207, *fax:* +44 1292 675704; e-mail: *RApublications@baesystems.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Issued in Kansas City, Missouri, on March 10, 2011.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–6097 Filed 3–15–11; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 132

[EPA–HQ–OW–2010–0492; FRL–9279–6]

RIN 2040–AF23

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to withdraw 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 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. Once finalized, the withdrawal will enable Wisconsin to implement its EPA-approved aquatic life criteria.

DATES: Written comments must be received by April 15, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2010–0492, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ow-docket@epa.gov.*
- *Mail to either:* Water Docket, USEPA, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460 or Francine Norling, Proposed Withdrawal of Certain Federal Aquatic Life Water Quality Criteria Applicable to Wisconsin, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604, Attention Docket ID No. EPA–HQ–OW–2010–0492.
- *Hand Delivery:* EPA Docket Center, EPA West Room 3334, 1301 Constitution Ave., NW., Washington, DC 20229 or Francine Norling, Proposed Withdrawal of Certain Federal Aquatic Life Water Quality Criteria Applicable to Wisconsin, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604, Attention Docket ID No. EPA–HQ–OW–2010–0492. 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–2010–0492. 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 information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *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 two Docket Facilities. The Office of Water (OW) Docket Center is open from 8:30 a.m. until 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–2426 and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. Publicly available docket materials are also available in hard copy at the U.S. EPA Region 5 address. Docket materials can be accessed from 9 a.m. until 3 p.m., Monday through Friday, excluding legal holidays. The telephone number is (312) 886–0271.

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 Claudia Fabiano, U.S. EPA Headquarters, Office of Science and Technology, 1200 Pennsylvania Avenue, NW., Mail Code 4305T, Washington, DC 20460 (telephone: (202) 566–0446 or e-mail: *fabiano.claudia@epa.gov*).

SUPPLEMENTARY INFORMATION: This notice is organized as follows:

General Information

What entities may be affected by this action?

This rule proposes to withdraw Federally promulgated aquatic life criteria for chronic and acute copper and nickel for all waters of the Great Lakes System in the State of Wisconsin designated for aquatic life uses. This rule also proposes to withdraw Federally promulgated chronic aquatic life use criteria for endrin for waters designated by Wisconsin as Cold Water, Limited Forage Fish, and Limited Aquatic Life Use, and withdraw Federally promulgated chronic aquatic life use criteria for selenium for waters designated as Cold Water, Warm Water Sportfish, Warm Water Forage Fish, and Limited Aquatic Life 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 waters within the Great Lakes System as defined in 40 CFR 132.2 in Wisconsin.
Municipalities	Publicly-owned treatment works discharging to waters within the Great Lakes System as defined in 40 CFR 132.2 in Wisconsin.

To determine whether your facility may be affected by this proposed withdrawal, examine 40 CFR 132.2, which defines "Great Lakes System" and describes the 40 CFR part 132 regulations. 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.**

What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.

• Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

• Make sure to submit your comments by the comment period deadline identified.

Background

A. What are the applicable Federal statutory and regulatory requirements?

In 1995, EPA promulgated a final rule known as "Water Quality Guidance for the Great Lakes System" at 40 CFR part 132, hereinafter referred to as the "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. Under CWA Section 118(c)(2), Great Lakes States were required to adopt provisions, consistent with the Guidance, into their water quality standards and NPDES permit programs. In the absence of State action, or in the case of an EPA disapproval of the revised State water quality standards, EPA was required to promulgate any necessary requirements pursuant to the Guidance within a two-year period.

As described in the preamble of the Guidance, when a State adopts and EPA approves revised numeric water quality criteria applicable to the Great Lakes System, thereby meeting the requirements of CWA Section 303(c)(2)(B), EPA will publish a notice of approval in the **Federal Register** at 40 CFR 132.5(f)(1). If EPA determines that all or part of the State criteria are inconsistent with the requirements of the CWA or the Guidance, then EPA will provide notice to the State and identify changes necessary for EPA approval (40 CFR 132.5(f)(2)). If the State does not adopt the changes within 90 days of the notification, then EPA publishes a notice identifying the approved and disapproved elements of the submission, then a proposed and subsequent final rule (40 CFR 132.5(f)(2)).

B. Why is 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 (40 CFR part 132). In October 2000, EPA disapproved six of Wisconsin's revised aquatic life criteria, including chronic and acute copper and nickel, and chronic endrin and selenium. In January 2008, Wisconsin began rulemaking to revise its water quality standards to address 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), EPA is required to review and approve new and revised State water quality standards before they can become effective for CWA purposes. EPA found that Wisconsin's revised criteria satisfy the Federal requirements for submittal of new or revised water quality standards by a State to EPA and are consistent with the CWA and the Guidance requirements. EPA approved Wisconsin's revised 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.

EPA's approval of Wisconsin's aquatic life criteria makes the Federally promulgated criteria no longer necessary for compliance with the CWA. Therefore, EPA has determined that the Federal aquatic life criteria for chronic and acute copper and nickel, chronic endrin (with the exception of the aquatic life criterion for waters designated as Warm Water Forage Fish and Warm Water Sportfish use), and chronic selenium (with the exception of the aquatic life criterion for waters designated as Limited Forage Fish use) may be withdrawn.

C. Why is EPA not withdrawing Wisconsin's endrin (chronic) aquatic life use criterion for waters designated as warm water sportfish and warm water forage fish use, and selenium (chronic) aquatic life use criterion for waters designated as limited forage fish use?

On July 1, 2009, EPA approved Wisconsin's revised chronic endrin aquatic life use criteria for all waters of the Great Lakes System in the State of Wisconsin designated for aquatic life uses. However, due to a transcription error, 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 to EPA and which EPA approved (0.036 μg/L). Therefore, EPA is not proposing to withdraw the Federal chronic endrin criterion for these aquatic life uses until after Wisconsin concludes rulemaking to correct the criterion in the State's regulations.

EPA took no action on Wisconsin's revised chronic selenium criterion for Limited Forage Fish waters in its July 1, 2009 action approving the other aquatic life criteria. In summary, 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, EPA is not proposing to withdraw the Federal chronic aquatic life selenium criterion as it applies to Wisconsin's Limited Forage Fish waters at this time. Wisconsin may revise their chronic selenium criterion and submit to EPA for review and approval.

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

EPA is proposing to withdraw certain Federally promulgated aquatic life criteria for Wisconsin included in the Guidance (40 CFR 132.6). Specifically, EPA is proposing to withdraw 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. EPA also is proposing to amend 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 to amend 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. Once finalize, the rule withdrawal will enable Wisconsin to implement under State law, the EPA-approved aquatic life criteria.

Wisconsin'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, aquatic life designated uses of Cold Water communities, Warm Water Sportfish communities, and Warm Water Forage Fish communities 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 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 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 contained in 40 CFR part 132, applicable to all waters within the Great Lakes Basin (*see* Table 2).

TABLE 2—ACUTE COPPER CRITERIA EQUATION

[All surface water classifications]

EPA criteria maximum concentration (μg/L)	Wisconsin acute toxicity criteria (μg/L)
CMC = exp(0.9422*ln(hardness)) − 1.700	ATC = exp(0.9436*ln(hardness)) − 1.6036

The difference between EPA's and Wisconsin's intercept in the 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 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 EPA's 1985 slope calculation used in the Guidance. 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 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 has adopted and 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 surface water classifications]

EPA Criterion continuous concentration (μg/L)	Wisconsin chronic toxicity criteria (μg/L)
CCC = exp(0.8545*ln(hardness)) − 1.702	CTC = exp(0.8557*ln(hardness)) − 1.6036

The difference between EPA's and Wisconsin's copper equation intercept is primarily due to the elimination of one of the most sensitive species from the criteria calculation (northern pikeminnow, genus *Ptychocheilus*), which is not native to Wisconsin. It is scientifically defensible for Wisconsin to eliminate from the calculation data for a non-native species which is not a surrogate for taxon that are 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 0.8557 is slightly different from 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 EPA's 1985 slope calculation used in the Guidance. 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 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 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 that contained in the Great Lakes Water Quality Guidance, 40 CFR part 132 as well as EPA's CWA Section 304(a) national criteria guidance (*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 surface water classifications]

EPA criteria maximum concentration (μg/L)	Wisconsin acute toxicity criteria (μg/L)
CMC = exp(0.846*ln(hardness)) + 2.255	ATC = exp(0.846*ln(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 EPA approved, two chronic nickel aquatic life criteria equations (*see* Table 5). The first equation is used to calculate the chronic nickel aquatic life criterion for Cold Water, Warm Water Sportfish, Warm Water Forage Fish, and Limited Forage Fish designated uses. The second equation is used to calculate the chronic nickel aquatic life criterion for the Limited Aquatic Life designated use.

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*ln(hardness)) + 0.0584	CTC = exp(0.846*ln(hardness)) + .0591	CTC = exp(0.846*ln(hardness)) + .4004

The equation used by Wisconsin for calculating the chronic 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 EPA's 304(a) recommendation. This difference is due to Wisconsin's use of a slightly different intercept and the acute-chronic ratio for the *Cladoceran* test data. The equation for the Limited Aquatic Life classification has a different value for the intercept because the fathead minnow data were not included in the calculation. Fathead minnow data were not included because this species is not expected to have a fish community in waters designed as Limited Aquatic Life use.

The regulations at 40 CFR part 132 contain EPA's chronic nickel aquatic life equation, which is applicable to all waters within the Great Lakes Basin. For the Cold Water, Warm Water Sportfish, Warm Water Forage Fish, and Limited Forage Fish water classifications, Wisconsin's 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 the Limited Aquatic Life water classification, the elimination of data for a non-resident species is an appropriate State-specific modification of EPA's equation. Wisconsin's equation is scientifically sound and results in criteria that are protective of the use, therefore Wisconsin's Limited Aquatic Life equation is 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 EPA reviewed and approved a chronic endrin criterion for Cold Water, Warm Water Forage Fish, and Warm Water Sportfish classifications that is identical to 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 aquatic life use endrin 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 EPA and which EPA approved (0.036 μg/L). Therefore, 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 Aquatic Life and Limited Forage Fish waters is higher than EPA's 304(a) recommendation. This is due to the fact that three of the four most sensitive genera used to calculate EPA's criterion do not exist in Limited Aquatic Life and Limited Forage Fish waters in Wisconsin. 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 EPA; *Cyprinus* (carp); *Piemphales* (fathead minnow); and *Pteronarcella* (stonefly). When the fathead minnow data 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 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

Wisconsin adopted revised chronic aquatic life criteria for selenium as reflected in Table 7. EPA reviewed and approved the revised selenium criteria for Cold Water, Warm Water Sportfish, and Warm Water Forage Fish classifications, which are identical to EPA's selenium criteria in 40 CFR part 132. The criteria are scientifically sound and protective of the uses, therefore they are 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 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 EPA's recommended 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 EPA's 1987 selenium aquatic life criteria document (selenite, +4). Wisconsin's value of 46.5 µg/L is slightly different than EPA's calculated criterion of 44.72 µg/L, because Wisconsin removed the data for two saltwater species used in 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 the following reasons:

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).

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 to 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 EPA's 1987 selenium criteria document. Given these reasons, EPA approved Wisconsin's chronic selenium criterion for Limited Aquatic Life waters as an acceptable State-specific modification of 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 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 EPA's recommendation is that Limited Forage Fish waters only support forage fish and invertebrates, and EPA's recommended criterion was based on observed effects of selenium on sportfish (blue gill) in field studies. Instead, Wisconsin calculated a chronic selenium criterion for Limited Forage Fish waters based on toxicity studies listed in EPA's 1987 selenium aquatic life criteria document (selenite, +4).

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, 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, 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, at this time EPA is not proposing to withdraw this Federal chronic aquatic life selenium criterion. Therefore, EPA's Federally promulgated criteria will continue to apply to Wisconsin's Limited Forage Fish waters.

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

Statutory and Executive Order Reviews

A. Executive Order 12866 (Regulatory Planning and Review)

This action proposes to withdraw 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 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, 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 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 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 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 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, 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 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)

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 imposes no regulatory requirements or costs on any Tribal government. It does not have substantial direct effects on Tribal governments, the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175.

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 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 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 EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

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

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because (1) since Wisconsin's criteria apply to all marine waters in the State, EPA does not believe that this action would disproportionately affect any one group over another, and (2) EPA has previously determined, based on the most current science and EPA's CWA Section 304(a) recommended criteria, that Wisconsin's adopted and EPA-approved criteria are protective of human health and aquatic life.

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: March 7, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 132 is proposed to be amended as follows:

PART 132—WATER QUALITY GUIDANCE FOR THE GREAT LAKES SYSTEM

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

Section 132.6 is amended by revising paragraphs (f) and (g) to read as follows:

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

* * * * *

(f) Effective [insert date to be determined in final rule], 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 as Warm Water Sportfish and Warm Water Forage Fish aquatic life use. Effective [insert date], the criterion for acute and chronic copper and nickel in Tables 1 and 2 of this part may be removed and reserved.

(g) Effective [insert date to be determined in final rule], 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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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152, 158, and 174

[EPA–HQ–OPP–2009–0499; FRL–8863–5]

RIN 2070–AJ27

Pesticides; Data Requirements for Plant-Incorporated Protectants (PIPs) and Certain Exemptions for PIPs; Notification to the Secretaries of Agriculture and Health and Human Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretaries of Agriculture and Health and Human Services.

SUMMARY: This document notifies the public that the Administrator of EPA has forwarded to the Secretaries of Agriculture and Health and Human Services a draft proposed rule under sections 21 and 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The draft proposed rule will propose codifying data requirements that specifically address the registration data needs of plant-incorporated protectants (PIPs). These data requirements are intended to provide EPA with data and other information necessary for the registration of a PIP or the issuance of an experimental use permit for a PIP. Also, EPA will propose to exempt cisgenic PIPs from registration to encourage research and development of useful biotechnology and reduce the number of PIPs seeking registration. Cisgenic PIPs are formed when genetic material is transferred, using bioengineering technology, between plants that could transfer the genetic material naturally.

DATES: Comments must be received on or before April 15, 2011.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0499. All documents in the docket are listed in the docket index available in *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 OPP