E. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule where the estimated costs to State, local, or tribal governments, or to the private sector, will be $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. To the extent that the rules being adopted in this action would impose any mandate at all as defined in section 101 of the Unfunded Mandates Act upon the state, local, or tribal governments, or the private sector, as explained above, this rule is not estimated to impose costs in excess of $100 million. EPA has determined that today's action simply delays the purchase requirements under state CFFPs and does not impose additional costs or regulatory burdens. In fact, the one-year delay of implementation of the purchase requirements is expected to reduce costs of compliance and ease regulatory burdens.

List of Subjects in 40 CFR Part 88

Environmental protection, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: April 3, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 88 is amended as follows:

PART 88—[AMENDED]

1. The authority citation for part 88 continues to read as follows:

Authority: 42 U.S.C. 7410, 7418, 7581, 7582, 7583, 7584, 7586, 7588, 7589, 7601(a).

2. Section 88.308.94 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 88.308.94 Programmatic requirements for clean-fuel fleet vehicles.

* * * * *

(b) *Program start date.* The SIP revision shall provide that the clean fuel vehicle purchase requirements begin to apply no later than model year 1999.

[FR Doc. 98–10151 Filed 4–22–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 132

[FRL–5999–8]

Amendment of the Provisions To Eliminate and Phase-Out Mixing Zones for Bioaccumulative Chemicals of Concern and Amendment to Procedure 8.D. of Appendix F (Pollutant Minimization Program) for the Final Water Quality Guidance for the Great Lakes System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; partial amendments.

SUMMARY: As a result of the decision in *American Iron and Steel Institute, et al.* v. *EPA* (*AISI*), 115 F.3d 979 (D.C. Cir. 1997), EPA today is amending the final Water Quality Guidance for the Great Lake System (Guidance) (40 CFR part 132) by removing the provisions to eliminate and phase-out mixing zones for bioaccumulative chemicals of concern (BCCs). Also in response to the AISI decision, EPA is today amending the Guidance by revising Procedure 8.D. of Appendix F to remove language in the Pollutant Minimization Program (PMP) provisions that might imply authorization for imposing water quality-based effluent limits (WQBELs) on internal waste streams or for requiring specific control measures to meet WQBELs.

EFFECTIVE DATE: April 23, 1998.

ADDRESSES: The public docket for this and earlier rulemakings concerning the Water Quality Guidance for the Great Lakes System, including the proposal, public comments in response to the proposal, other major supporting documents, and the index to the docket are available for inspection and copying at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604 by appointment only. Appointments may be made by calling Mary Jackson-Willis (telephone 312–886–3717).

FOR FURTHER INFORMATION CONTACT: Mark Morris (4301), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460 (202–260–0312).

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Potentially Affected Entities

Citizens concerned with water quality in the Great Lakes System may be interested in this rulemaking. Also, entities potentially affected by today's action are those discharging pollutants to waters of the United States in the Great Lakes System. Categories and entities which may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging to waters in the Great Lakes System as defined in 40 CFR 132.2.
Municipalities	Publicly-owned treatment works discharging to waters of the Great Lakes System as defined in 40 CFR 132.2.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this final rule. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by this final rule, you should carefully examine the definition of ''Great Lakes System'' in 40 CFR 132.2 and examine 40 CFR 132.2 which describes the part 132 regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Today's Rule

The final Guidance included ambient water quality criteria setting maximum ambient concentrations for pollutants to be met in all waters of the Great Lakes Basin and implementation procedures used to develop WQBELs for facilities discharging these pollutants. States and Tribes were required to adopt regulations consistent with EPA's Guidance criteria and implementation procedures by March 23, 1997. Once the criteria and implementation procedures take effect, permits for discharges of the pollutants they cover must include WQBELs needed to attain the criteria if the discharge has or may have the reasonable potential to cause or contribute to an exceedance of the water quality standard.

On June 6, 1997, the U.S. Court of Appeals for the District of Columbia Circuit issued its decision upholding, with three minor exceptions, the Great Lakes Water Quality Guidance which EPA promulgated on March 23, 1995. *American Iron and Steel Institute, et al.* v. *EPA* (*AISI*), 115 F.3d 979 (D.C. Cir. 1997). The Court vacated three provisions of the Guidance. The Court vacated the criteria for polychlorinated biphenlys (PCBs), and the provisions of the Guidance ''insofar as it would eliminate mixing zones for bioaccumulative chemicals of concern (BCCs) and impose water quality-based

effluent limitations (WQBELs) upon internal facility waste streams.'' 115 F.3d at 985. On October 9, 1997, EPA published a notice revoking the PCB human health criteria pursuant to the Court's decision (62 FR 52922). Today's notice addresses the other two provisions of the Guidance vacated by the Court.

First, EPA is today removing the mixing zone elimination and phase-out provision in the Guidance. Procedure 3.C. of the Guidance contained the provision to eliminate mixing zones for BCCs for new discharges and to phase them out over the next 10 years for existing discharges. The Court vacated this provision from the Guidance stating that the Agency had failed to show that the provision was justified.

Second, EPA is amending Procedure 8.D. of Appendix F in response to the *AISI* decision. Procedure 8.D. establishes requirements for a ''Pollutant Minimization Program,'' which is required anytime a permit includes a WQBEL below the level of quantification (i.e., level of pollutant that can be reliably quantified by the specified method). In the *AISI* decision, the Court vacated Procedure 8.D. insofar as it authorized internal WQBELs, 115 F.3d at 979, 996. The Court expressed concern that internal WQBELs would deprive a permittee of the ability to choose an end-of-pipe control system to meet the water quality based effluent limits rather than controls on internal waste streams. *Id*. Although EPA explained in the Supplementary Information Document to the Great Lakes Water Quality Guidance (SID) that it had no intent to impose specific control measures on permittees through the PMP provision, it is revising the Procedure 8.D. language to allay concerns about possible misinterpretation of the language as authorizing imposition of internal WQBELs or specific control measures.

1. Mixing Zone Elimination and Phase-Out Provisions

One of the implementation procedures EPA promulgated in the Guidance was Procedure 3.C. of Appendix F, mixing zones for BCCs. Under this procedure, no mixing zones were to be granted for new dischargers of BCCs after March 23, 1997. Mixing zones for existing dischargers of BCCs were, moreover, to have been phased out by March 23, 2007. Various industries and trade associations challenged these mixing zone provisions for BCCs. They alleged that the elimination of mixing zones for BCCs would not significantly reduce pollutant loadings to the Great Lakes but would inflict costs upon industry that are excessive in relation to the degree of pollution reduction achieved, even if that reduction were significant.

In the *AISI* litigation, EPA explained to the Court the significance of removing BCCs from the Great Lakes Basin because of the closed nature of the system and its unique environmental characteristics. While the Court acknowledged the possibility of environmental benefit of the mixing zone provisions, the Court found that EPA failed to show that the provisions were justified in light of the costs. The Court therefore vacated the provisions. 115 F.3d. at 997.

Pursuant to the Court's decision, EPA is today amending the Guidance by removing Procedure C.3. In the interim, pursuant to independent State or Tribal authority, Great Lakes States and Tribes may adopt a mixing zone elimination and phase-out provision. EPA intends to propose reinstating this provision in the near future and continues to support eliminating mixing zones for BCCs within the Great Lakes Basin wherever it is technically and economically feasible to do so.

2. Pollutant Minimization Program (PMP) Revisions

Procedure 8 of Appendix F of the Guidance addresses situations where WQBELs are below the level of quantification of the specified analytical method (i.e., the level that can be reliably quantified). A WQBEL of this nature must be included in the permit as calculated and is the enforceable limit. However, because compliance with the limit cannot be measured end-of-pipe, Procedure 8 includes special provisions to help ensure that the WQBEL is being met, including the development and implementation by the permittee of a Pollutant Minimization Program (PMP), Procedure 8.D. Procedure 8.D. called for, in part, internal monitoring, a survey of all potential sources of the pollutant of concern to the waste stream, a control strategy, implementation of cost-effective control measures consistent with the control strategy, and reporting on, among other things, all actions taken to reduce or eliminate the identified sources of the pollutant. In the SID, EPA explained that:

''In procedure 8, EPA does not go so far as to set in-plant effluent limitations, but rather simply provides for internal monitoring and adoption of control strategies with a goal of maintaining all sources of the pollutant to the wastewater collection system below the WQBEL. The WQBEL itself continues to apply only at the end of the pipe, after treatment.'' SID at 425.

EPA further explained that ''the 'PMP' makes no attempt to dictate the treatment or source reduction strategies that a permittee could or should implement.'' SID at 426.

Industry litigants challenged Procedure 8 as impermissibly establishing internal WQBELs and dictating how they complied with end-of-pipe limits, i.e., through source reduction measures. In *AISI*, the Court found that, although the CWA clearly allows for monitoring of internal waste streams to evaluate compliance with end-of-pipe limits and establishing end-of-pipe WQBELs that effectively force changes to internal equipment or processes, it does not allow imposition of WQBELs for internal sources. Accordingly, the Court vacated Procedure 8.D. ''insofar as it would impose the point-source WQBEL upon a facility's internal waste streams.'' 115 F.3d at 996. The Court did not specify what language in Procedure 8.D., if any, needed to be changed.

Although EPA has never interpreted Procedure 8.D. to authorize imposition of internal WQBELs or to dictate control strategies, EPA is today amending the language in Procedure 8.D. to address the Court's concerns and eliminate any ambiguity about how EPA intends Procedure 8.D. to be interpreted. Today's amendments cover the two related concerns raised by the Court: First, that WQBELs not be imposed on internal waste streams; and second, that permittees retain the ability to choose how they will comply with permit limits. Eliminating the references to internal waste stream goals in the introduction to 8.D. and in paragraph 8.D.3. addresses the first concern. To address the second concern, EPA is amending language that might imply either that permitting authorities establish control measures in the PMP (introduction to 8.D.) or that permittees are restricted in determining how they will meet their end-of-pipe WQBELs (references to pollutant sources in paragraphs 8.D.4 and 8.D.5.c).

Today's revisions to Procedure 8.D. do not change the Agency's intent with respect to implementation of the pollutant minimization programs; it continues to be that such programs will assist in ensuring that the WQBELs are met at the end of the pipe. The permittee must inventory all sources of the pollutant to the waste stream, but in developing and implementing a control strategy, the permittee may choose any appropriate control measure(s) that it expects will reduce pollutant levels so

as to meet the WQBEL. States and Tribes may evaluate the adequacy of the permittee's control strategy to achieve the stated goal, but nothing in Procedure 8.D. authorizes a permitting authority to dictate specific control measures. EPA strongly encourages permittees to consider source reduction approaches, such as process changes and product substitution, when determining how to obtain necessary reductions because these measures are often more cost-effective than treatment alternatives. A permittee may, of course, choose instead to install wastewater treatment or institute other control measures to reduce the level of the pollutant in its discharge.

C. Consequences of Today's Action

As a result of today's action, States and Tribes need not adopt or submit to EPA for review a procedure to eliminate or phase-out mixing zones for BCCs for new and existing discharges to waters within the Great Lakes Basin. States and Tribes may adopt the mixing zone elimination and phase-out provisions pursuant to independent State or Tribal authority. The Agency continues to support eliminating mixing zones for BCCs within the Great Lakes Basin wherever it is technically and economically feasible to do so.

States which have language in their regulations or other implementation documents that parallels the language in the original Procedure 8.D. would be considered consistent with 40 CFR part 132. However, to minimize confusion about how a State interprets its provision, EPA encourages States to issue interpretations of their PMP procedures to specify whether they interpret those procedures consistent with EPA's interpretation of Procedure 8.D. and today's revisions or whether they intend to require internal WQBELs or to categorically require specific control measures (e.g., source reduction as a water quality-based requirement) pursuant to independent State authority as provided for in section 510 of the CWA.

II. "Good Cause" Under the Administrative Procedure Act

EPA has determined that it has "good cause" under section 553(b)(3) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3), to promulgate this final rule without prior opportunity for notice and comment. EPA finds it "unnecessary" to provide an opportunity to comment on the strictly legal issue of the impact of the *AISI* decision on the provisions to eliminate and phase-out mixing zones for BCCs in the March 1995 Guidance or changes to language in Procedure 8.D. to conform to the Court's decision. Today's rule merely implements the decision of the Court.

EPA also believes the public interest is best served by reacting to the Court's decision without further delay. For this reason, EPA has also determined that it has "good cause" under 5 U.S.C. 553(d) to make the rule effective upon publication.

III. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this final rule is not a "significant regulatory action" and is therefore not subject to OMB review.

IV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

V. Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), whenever a Federal agency promulgates a final rule after being required to publish a general notice of proposed rulemaking under section 553 of the Administrative Procedures Act (APA), the agency generally must prepare a final regulatory flexibility analysis describing the economic impact of the regulatory action on small entities. EPA has not prepared a final regulatory flexibility analysis for this action because the Agency was not required to publish a general notice of proposed rulemaking for this rule.

As explained above, section 553 of the APA provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary and contrary to the public interest, an agency may first issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without notice and opportunity for comment for the reasons spelled out above. In these circumstances, the RFA does not require preparation of a final regulatory flexibility analysis. Today's final rule establishes no requirements applicable to small entities.

VI. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L 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 section 202 of 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 a rule for which a written statement is needed, section 205 of 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 provision 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.

The requirements in section 202 and 205 apply to general notices of proposed rulemaking and any final rule for which a general notice of proposed rulemaking was published. For reasons explained previously, a notice of proposed

rulemaking was not published in this proceeding. Therefore, sections 202 and 205 do not apply to EPA's action here.

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 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. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As explained above, today's rule withdrawals provisions and therefore, does not contain any regulatory requirements. Thus this rule is not subject to the requirements of section 203 of UMRA.

VII. Executive Order 12875

For the same reasons as stated above in section VI., EPA has determined this final rule does not impose federal mandates on State, local or Tribal governments. Therefore this rule is not subject to the provisions E.O. 12875.

Nonetheless, in compliance with Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA has extensively involved Great Lakes State, Tribal and local governments in the development of the 1995 Guidance. The rulemaking which promulgated the Guidance in 1995 was subject to Executive Order 12875. The process used to develop the Guidance marked the first time that EPA had developed a major rulemaking effort in the water program through a regional public forum. The public process which lasted over a seven year period and involved Great Lakes States, EPA, and other Federal agencies in open dialogue with citizens, Tribal and local governments, and industry in the Great Lakes Basin is described further in the preamble to the final Guidance. *See* 56 FR 15383–15384 (March 23, 1995).

As described above, this action by EPA merely conforms the regulations to the Court order in *AISI* and therefore, does not create any federal mandates.

VIII. Paperwork Reduction Act

This action includes no information collection activities subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) Therefore, no Information Collection Request is required to be prepared or submitted to OMB for approval.

IX. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required 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, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office and Management and Budget, an explanation of the reasons for not using such standards.

This final rule does not prescribe any technical standards, so we have determined that the NTTAA requirements are not applicable.

List of Subjects in 40 CFR Part 132

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

Dated: April 14, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble Title 40, Chapter I of the Code of Federal Regulations is to be amended as follows:

PART 132—WATER QUALITY GUIDANCE FOR THE GREAT LAKES SYSTEM

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

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

2. Procedure 3 of Appendix F to part 132 is amended by removing Procedure 3.C.

3. Procedure 8 of Appendix F to part 132 is amended by revising in the introductory text of 8.D. the second sentence and the third sentence; by revising paragraph 8.D.3; by revising paragraph 8.D.4; and by revising paragraph 8.D.5.c. to read as follows:

Procedure 8: Water Quality-based Effluent Limitations Below the Quantification Level

* * * * *

D. Pollutant Minimization Program. * * * The goal of the pollutant minimization program shall be to maintain the effluent at or below the WQBEL. In addition, States and Tribes may consider cost-effectiveness when evaluating the requirements of a PMP. * * *

1. * * *

2. * * *

3. Submittal of a control strategy designed to proceed toward the goal of maintaining the effluent below the WQBEL;

4. Implementation of appropriate, cost-effective control measures consistent with the control strategy; and

5. * * *

a. * * *

b. * * *

c. A summary of all action undertaken pursuant to the control strategy.

6. * * *

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[FR Doc. 98–10717 Filed 4–22–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410, 417, 424, and 482

[HCFA–3706–F]

RIN 0938–AE99

Medicare Program; Scope of Medicare Benefits and Application of the Outpatient Mental Health Treatment Limitation to Clinical Psychologist and Clinical Social Worker Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule addresses requirements for Medicare coverage of services furnished by a clinical psychologist or as an incident to the services of a clinical psychologist and for services furnished by a clinical social worker. The requirements are based on section 6113 of the Omnibus Budget Reconciliation Act of 1989, section 4157 of the Omnibus Budget Reconciliation Act of 1990, and section 147(b) of the Social Security Act Amendments of 1994 (SSA '94). This rule also addresses the outpatient mental health treatment limitation as it applies to clinical psychologist and clinical social worker services.

This final rule also conforms our regulations to section 104 of the Social Security Act Amendments of 1994. Section 104 provides that a Medicare patient in a Medicare-participating hospital who is receiving qualified psychologist services may be under the care of a clinical psychologist with respect to those services, to the extent permitted under State law.

In addition, this final rule requires that clinical psychologists and clinical