

2. U.S. Census Bureau letter from Mark E. Wallace to Maria J. Doa, U.S. EPA.

VIII. Regulatory Assessment Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to 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. EPA has determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's collections of information, after initial display in the **Federal Register** and in addition to its display on any related collection instrument, are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 372 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned the Information Collection Requests (ICRs) OMB control numbers 2070-0093 (EPA ICR No. 1363.11) for Form R and 2070-0143 (EPA ICR No. 1704.05) for Form A.

Copies of the ICR documents may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at auby.susan@epa.gov, or by calling (202) 566-1672. A copy may also be downloaded from the Internet at <http://www.epa.gov/icr>. Include the EPA ICR and OMB numbers in any correspondence.

This proposed rule would not impose any new information collection burden on affected facilities. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. Facilities that would be affected by the proposed rule already report their industrial classification codes on the approved reporting forms using SIC codes. Moreover, as noted above, OMB adopted NAICS over five years ago, so affected facilities are or should already be familiar with their NAICS codes from administrative and regulatory reporting requirements of EPA and other governmental entities that have already converted to NAICS reporting.

Although EPA does not believe that the reporting requirements associated with this proposed rule would impose any new information collection burden, Form R and Form A will have to be amended to account for the reporting of both SIC and NAICS codes for the first full reporting year after the effective date of the final rule. They will also have to be amended to account for the reporting of NAICS codes after that first full reporting year. EPA will work with OMB to make the necessary changes to the TRI reporting forms.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*

The 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 a 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 today's rule on small entities, small entity is defined as: (1) A business that is classified as a "small business" by the Small Business Administration 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.

After consideration of the potential economic impacts of this proposed rule on small entities, it has been determined that this action will not have a significant economic impact on a substantial number of small entities.

The change proposed by this rulemaking is to require affected facilities to report their NAICS rather than their SIC code, except for the first year of implementation when both the SIC and the NAICS codes will be reported. In the first year, the additional burden of reporting both SIC and NAICS codes is negligible considering that the SIC code is readily available from previous reporting forms submitted by the facility and that facilities are already using the NAICS code in other government data collection exercises. In subsequent years, the net burden on small entities should be zero as the NAICS code replaces the SIC code on the reporting forms. We welcome comments on issues related to potential impacts of the proposed rule on 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 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