

nickel contained in the CTR table at 40 CFR 131.38(b)(1) for saltwater are: 74 ug/l dissolved acute (exposure for a short period of time) and 8.2 ug/l dissolved chronic (exposure for an extended [4 day] period of time). Both the copper and nickel criteria are further expressed as a function of the water-effect ratio (or WER). The WER in the CTR is assumed to be 1 for all applicable pollutants but may be otherwise defined by the State using appropriate procedures (*see* 65 FR 31718).

The aquatic life water quality objectives for copper adopted by the State of California and approved by EPA for south San Francisco Bay are: 10.8 ug/l dissolved acute (exposure for a 1 hour average period of time) and 6.9 ug/l dissolved chronic (exposure for a 4 day average period of time). The aquatic life water quality objectives for nickel adopted by the State of California and approved by EPA for south San Francisco Bay are: 62.4 ug/l dissolved acute (exposure for a 1 hour average period of time) and 11.9 ug/l dissolved chronic (exposure for a 4 day average period of time).

Under the procedures set out in the National Toxics Rule, published December 22, 1992, and referenced in the CTR, when a state adopts and EPA approves water quality criteria that meet the requirements of the CWA, EPA will issue a rule amending the federal regulations to withdraw the federally applicable criteria. If the State's criteria are no less stringent than the promulgated Federal criteria, EPA will withdraw its criteria without notice and comment rulemaking because additional comment is unnecessary. However, if a State adopts criteria that are less stringent than the Federally promulgated criteria, but that in the Agency's judgement fully meet the requirements of the Act, EPA will provide an opportunity for public comment before withdrawing the Federally promulgated criteria.

On October 17, 2002, the State Water Resources Board adopted the site-specific objectives for copper and nickel in the lower south San Francisco Bay. The objectives were subsequently submitted to EPA on January 9, 2003, for its review and approval. EPA recognizes that three out of the four California criteria for copper and nickel are less stringent than the federally CTR promulgated criteria. However, the site-specific objectives were developed from the results of a number of detailed studies and technical reports that were the subject of technical peer review and were part of the collaborative stakeholder process known as the

"Santa Clara Basin Watershed Management Initiative." Based on this additional information, EPA determined that these adopted criteria are fully protective of the aquatic life designated uses of California's waters in the south San Francisco Bay and met the requirements of the Clean Water Act. EPA approved California's water quality objectives on January 21, 2003. Therefore, EPA determined that the federal aquatic life water quality criteria for copper and nickel in these waters are no longer necessary.

Because three out of the four California criteria for copper and nickel are less stringent than the federally promulgated criteria, EPA is requesting comments on its action to withdraw copper and nickel criteria from the CTR. EPA will address public comments in a subsequent final rule based on this proposed rule. Any parties interested in commenting must do so at this time.

#### Statutory and Executive Order Reviews

##### 1. Executive Order 12866—Regulatory Planning and Review

This action withdraws specific Federal requirements applicable to south San Francisco Bay, California 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.

##### 2. Paperwork Reduction Act

This proposed 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 proposing to withdraw Federal requirements that no longer need to apply to south San Francisco Bay, California.

##### 3. 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. This proposed 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.

##### 4. Unfunded Mandate Reform Act

Title III 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. Today's proposed 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, today's proposed rule is not subject to the requirements of UMRA section 202 and 205 for a written statement and small government agency plan. Similarly, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA section 203.

##### 5. Executive Order 13132—Federalism

Executive Order 13132, entitled, "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure State and local government officials have an opportunity to provide input in the development of regulatory policies 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 governments. This proposed rule imposes no regulatory requirements or costs on any State or local governments, therefore, it does not have federalism implications under Executive Order 13132.

##### 6. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Again, this proposed rule 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, as specified in Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000).