

pollutant and subcategory as published in the 2000 rule. The second set of limitations would state that, if prior to December 22, 2003, EPA has amended part 437 to remove pretreatment standards for selenium, barium, molybdenum, antimony, and titanium for certain specified subcategories, then the limitations specified above for those pollutants and subcategories would not apply.

Alternatively, EPA recommends that the POTWs consider including, in the proposed and, if necessary, final amendments to its pretreatment program a provision stating that the limitations for selenium, barium, molybdenum, antimony, and titanium correspond to those pretreatment standards that are in effect for Clean Water Act purposes on December 22, 2003. By including a provision like this, the POTW can incorporate the most recent EPA decisions regarding pretreatment standards for these pollutants without the need for further administrative proceeding. The POTW would be free, of course, following promulgation of any changes to the pretreatment standards to revise its local pretreatment program specifically to reflect any changes.

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

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 [58 FR 51735, (October 4, 1993)], the Agency must determine whether a 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.

It has been determined that this proposal 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*

This action would not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It would merely delete the limitations for five pollutants from certain provisions of the current rule and corrects a limitation for another pollutant that was incorrectly transcribed from the version signed by the EPA Administrator. Consequently, today’s proposed rule does not establish any new information collection burden on the regulated community.

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.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, 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 impact of today’s proposed rule on small entities, a small entity is defined as (1) a small business with gross revenue under \$6 million (based on Small Business Administration size

standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population 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 considering the economic impacts of today’s proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The proposal rule removes or revises the limitations and standards for five pollutants from certain provisions of the current rule and corrects an error in another provision. These changes reduce the economic impacts of the regulation on those entities, including small entities, subject to the limitations and pretreatment standards. The estimated reduction in the analytical laboratory costs of compliance is about \$496,000 (DCN 47.6). The change to the BOD5 limitation will result in no change in economic burden because this modification merely corrects the limitation to reflect the BOD5 limitation in the August 28, 2000, version of the regulation signed by the Administrator.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

### *D. 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 the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the