

potential changes in the national saltwater copper criteria and solicits comments. The data can be found in the draft document entitled, *Ambient Water Quality Criteria—Copper, Addendum 1995*. This document is available from the Office of Water Resource Center or Water Docket. Based on those comments, the saltwater copper criteria in this interim final rule may be revised in the final rule to reflect these new data.

### I. Procedural Requirements

Section 553 of the Administrative Procedure Act provides that when an agency, for good cause, finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, it may first issue a rule without providing notice and an opportunity to comment. EPA has concluded that there is good cause to issue this interim final rule without notice and comment and to make the rule effective immediately.

In 1987, Congress amended the Clean Water Act to provide that States must adopt numeric criteria to control the discharge of toxic pollutants. Before this requirement was enacted, few States had adopted numeric criteria for toxic pollutants and had to rely on "narrative" criteria (e.g., "free from toxics in toxic amounts") to set discharge limits for such pollutants. Congress, expressing concern over the calculation of discharge limitations for toxics without numeric criteria, required States to adopt numeric, pollutant-specific criteria for toxic pollutants (56 FR 58423-58424, Nov. 19, 1991).

Following promulgation of the NTR, EPA continued to evaluate available information on metals. EPA held a public meeting of experts in which a recommendation was made to express the ambient water criteria as dissolved metal. This recommendation and others, were noticed for public comment at 58 FR 32131, June 8, 1993. It is EPA's judgment that aquatic life criteria for metals, when expressed as dissolved metal provide a more accurate measurement of metals bioavailability to organisms in the water column than when expressed as total recoverable metal. Thus, in some situations, the total recoverable metals criteria in the NTR may result in permit limits that are more stringent than if the criteria were expressed in a dissolved form. As a result, in these situations, permitting authorities in the NTR States may be imposing more stringent (and potentially more costly) effluent limitations on their dischargers than will be required to meet the new

dissolved metals aquatic life criteria put in place today.

EPA considered the impacts of a stay of the current metals criteria while it undertook a standard rulemaking (i.e., proposed rule followed by a final) to revise the aquatic life metals criteria to express them in a dissolved form. However, during the effective period of the stay (the interim between proposal and final rule), permitting authorities for the NTR States would generally need to use the States' narrative criteria (e.g., free from toxics in toxic amounts) to develop permit limits for the discharge of toxics. Because the Congressional directive is clear that States must have numeric criteria for toxic pollutants, EPA rejected this approach in favor of an interim final rule.

By today's action the Agency upholds the intent of § 303(c)(2)(B) of the Clean Water Act and avoids the need for permitting authorities to rely on narrative criteria to develop permit limits. Further, this interim final rule is a temporary measure. The Agency notes that considerable public comment has already been obtained on the Metals Policy and the specific criteria being issued in this interim final rule. EPA held a meeting with invited experts in January 1993 in Annapolis, Maryland to further elicit comment on the use of dissolved metals for developing national metals criteria. The Agency solicited comments on the recommendations made by presenters at that meeting in the Federal Register on July 9, 1993 (58 FR 32131). The Metals Policy issued in October 1993 has received wide-spread distribution and informal response from many interested parties. In August 1994, EPA issued a **Federal Register** notice indicating that the Agency was considering the use of the Metals Policy to develop metals criteria in the Great Lakes Initiative (59 FR 44678, August 30, 1994) and comments were received on this issue. Today's action has the additional benefit of the comments received from the August 1994 notice on the Great Lakes Initiative.

EPA therefore concludes that public comment on this interim measure is unnecessary because ample comment has already been received on the numeric dissolved metals criteria and additional comment is being solicited and will be considered before a final rule is issued. Further, a public comment process before adopting the new metals criteria is contrary to the public interest because: 1) the current metals criteria place a potentially unnecessary regulatory burden on dischargers in the States covered by this rule, without necessarily providing additional protection to aquatic life in

the water column and 2) it is in the public interest for the States to have numeric criteria protective of aquatic life.

Because of the potential adverse effect on public interest noted above, the Agency has determined there is good cause for making this regulation effective immediately.

### J. Regulatory Assessment Requirements

#### 1. Unfunded Mandates Reform Act of 1995

Section 201 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, requires each Agency, unless prohibited by law, to assess the effects of Federal regulation on State, local and tribal governments and the private sector under section 202 of the Act. EPA must prepare a written statement to accompany any rules where the estimated costs to State, local and tribal governments, in the aggregate, or to the private sector will be \$100 million or more in any one year. Under section 205, for rules that require a written statement under section 202, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of such a rule and that is consistent with statutory requirements. Also, for such rules, section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly and uniquely affected by the rule.

EPA estimates that the costs to State, local, and tribal governments, or to the private sector, from today's interim final rule will not be \$100 million or more. EPA has determined that this rule should reduce current regulatory requirements imposed by the NTR. By promulgating the metals criteria in the NTR as dissolved metals, rather than total recoverable, EPA is reducing potential costs to discharge permittees and other parties subject to the water quality criteria. Therefore, an unfunded mandates statement pursuant to section 202 is not necessary.

While an unfunded mandates statement is not necessary for this rule, EPA notes that it has previously considered the costs and benefits of promulgating Federal water quality criteria when the Agency issued the NTR in 1992. See 57 FR 60903-60909 (December 22, 1992). That analysis would continue to be relevant with respect to this issue of costs and benefits arising from Federal promulgation of criteria for states. Of course, to the extent today's interim final rule is putting in place less burdensome