

Region 2's Home page at: <http://www.epa.gov/region02/water/dredge>.

2. *In person.* The complete administrative record for this action has been established and includes supporting documentation as well as printed, paper versions of electronic comments. Copies of information in the record are available upon request. The official record of this rulemaking is available for inspection at the EPA Region 2 Library, 16th Floor, 290 Broadway, New York, NY 10007-1866. For access to the docket materials, call Rebecca Garvin at (212) 637-3185 between 9 a.m. and 3:30 p.m. Monday through Friday, excluding legal holidays, for an appointment. The record is also available for viewing at EPA Region 2's Edison NJ Office Library, 2890 Woodbridge Avenue, Building 209, MS-245, Edison, New Jersey 08837. For access to the docket materials at this facility, call Ms. Margaret Esser (732) 321-6762 between 9 a.m. and 3:30 p.m. Monday through Friday, excluding legal holidays, for an appointment. The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying.

V. 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 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 entitlement, 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."

Today's action, which establishes a HARS-specific PCB worm tissue criterion of 113 ppb, is not a significant

regulatory action under E.O. 12866. In particular, as explained in the Response to Comments Document included in the record for this rule, even if one assumes a worst case scenario of 4 million cubic yards of maintenance dredged material from New York/New Jersey Harbor for one year, the projected worst-case economic impact could be approximately \$62.5 million or as low as \$14.1 million per year depending upon the dredging volume determined to be unsuitable for the HARS (See Response to Comment 7-2 in the Response to Comments Document (USEPA, 2003a)). Furthermore, the 113 ppb PCB value has been in use since the September 2000 MOA. Since that time there has been only one HARS application where the dredged material was determined unsuitable for the HARS (U.S. Gypsum) on the basis of the 113 ppb PCB value. Two additional HARS applications (Port Imperial Corporation and Naval Weapons Station Earle) would have been rejected under the proposed rule. As such, given that only two businesses (the U.S. Navy is not a maritime business) would have been affected, EPA has seen no material economic impact on maritime businesses in NY/NJ Harbor since the 113-ppb value was announced in the September 2000 MOA (USEPA 2000a). Since the signing of the MOA in September 2000, there has been more dredging and even deepening of NY/NJ Harbor than since the HARS was designated (USACE, 2002). From the time the HARS was designated in 1997 through when the September 2000 MOA was announced, two additional businesses (Castle Astoria and Refined Sugars [now American Sugars]) would have been impacted by today's rule. A total of four businesses would have been impacted by today's rule, since the HARS was designated to present. Given that each business represents a different industry, EPA concludes that this rule does not represent a material impact on any one business in New York/New Jersey Harbor. Therefore, today's rule will not 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. It thus has been determined that this rule is not a "significant regulatory action" under the terms of the Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This final rule would 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 would not require persons to obtain, maintain, retain, report, or publicly disclose information to or for a Federal agency.

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.

After considering the economic impact of today's final rule on small entities, the Agency certifies that this action will not have a significant economic impact on a substantial number of small entities as explained below.

For the purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business based on the Small Business Administration's (SBA) size standards; (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. The SBA thresholds define minimum employment, sales revenue, or other factors than may qualify an industry segment as small. Size standards have been established for types of economic activity, or industry, generally under the North American Industry Classification System (NAICS) defined at 13 CFR 121.201. Table 1 lists the SBA size standards and NAICS codes for businesses potentially applicable to today's rule.

Table 1. Small Business Size Standards matched to North American Industry Classification System (NAICS). The NAICS codes in this table include modifications made to NAICS by the Office of Management and Budget effective January 1, 2002. Referred to as NAICS 2002. These size standards are based on NAICS 2002. They are effective October 1, 2002.