

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
221210	Natural Gas Distribution		500
Except	Dredging and Surface Cleanup Activities ¹	¹ \$17.0	
311312	Cane Sugar Refining		750
311313	Beet Sugar Manufacturing		750
322130	Paperboard Mills		750
324110	Petroleum Refineries ²		² 1,500
327420	Gypsum Product Manufacturing		1,000
336611	Ship Building and Repairing		1,000
336612	Boat Building		500
483111	Deep Sea Freight Transportation		500
4831123	Deep Sea Passenger Transportation		500
483113	Coastal and Great Lakes Freight Transportation		500
483114	Coastal and Great Lakes Passenger Transportation		500
483211	Inland Water Freight Transportation		500
483212	Inland Water Passenger Transportation		500
488310	Port and Harbor Operations	21.6	
488320	Marine Cargo Handling	21.5	
488330	Navigational Services to Shipping	6.0	
493110	General Warehousing and Storage	21.5	
493120	Refrigerated Warehousing and Storage	21.5	
493130	Farm Product Warehousing and Storage	21.5	
493190	Other Warehousing and Storage	21.5	

¹ NAICS code 237990—Dredging: To be considered small for purposes of Government procurement, a firm must perform at least 40 percent of the volume dredged with its own equipment or equipment owned by another small dredging concern.

² NAICS code 324110—For purposes of Government procurement, the firm may not have more than 1,500 employees or more than 75,000 barrels per day capacity of petroleum-based inputs, including crude oil or bona fide feedstocks. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

EPA obtained information about all permits issued and any current permit applications in order to assess the potential universe of small entities that could be affected by today's rule. Since the HARS was first designated in 1997, the U.S. Army Corps of Engineers has received 19 private permit application for HARS placement (USEPA, 2003b), of which 15 permits were issued (Federal authorizations were not included in this analysis as the USACE is not a small entity), and there are currently 2 active permit applications pending (New York Waterways and Naval Weapons Station Earle Pier 3). The remaining permit applications (New York State Thruway and Department of Army, Op Sail) are no longer active. As the HARS is expected to exist for a limited time, until the PRA has been remediated with at least one meter of Remediation Material, EPA believes it is reasonable to assume that the universe of current and pending applications (based upon over 5 years of application history) constitutes the reasonable universe of entities affected by the today's rule. Of the 19 permit applications, only 4 (Castle Astoria Terminals, Inc., Port Imperial Marina, New York Waterways, and International Matex Tank Terminals) are small entities, which is not a substantial number of small entities. Of the four, three (Castle Astoria Terminals, Inc., Port Imperial Marina, and New York Waterways)

would have been affected by today's proposal, based upon past permitting information. Castle Astoria Terminals, Inc. has had a permit for HARS placement since 1999, which expired in January 2003, but they never dredged. Port Imperial Marina recently received a permit for HARS placement, but dredges very infrequently. New York Waterways does not currently have a HARS placement permit, and has not dredged for many years. Further, these small entities are only a very small percentage of their SIC code. This analysis was included in the preamble to the proposed rule (67 FR 62659) and no additional small businesses were identified during the comment period.

In summary, based on past permit information, there would have been only a few small entities affected by the final rule, with low impacts. As such, EPA concludes that the final rule will not have a significant impact on a substantial number of small entities. Therefore, for the reasons explained above, the Regional Administrator certifies, pursuant to section 605(b) of the RFA, that the final rule will not have a significant economic impact on a substantial number of small entities.

D. The Unfunded Mandates Reform Act and Executive Order 12875

Title II 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, 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 Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have