

organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

#### *B. How Has EPA Complied With the Regulatory Flexibility Act?*

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of a hazardous substance depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

#### **VII. Possible Changes to the Effective Date of the Rule**

##### *A. Has This Rule Been Submitted to Congress and the General Accounting Office?*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

##### *B. Could the Effective Date of This Final Rule Change?*

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the Federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: An annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

##### *C. What Could Cause the Effective Date of This Rule to Change?*

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of

regulations promulgated under CERCLA. Although *INS v. Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington v. EPA*, 86 F.3d 1214, 1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

#### **VIII. National Technology Transfer and Advancement Act**

##### *A. What Is the National Technology Transfer and Advancement Act?*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

##### *B. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?*

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### **IX. Executive Order 12898**

##### *A. What is Executive Order 12898?*

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure