

publishing a notice of rulemaking for any proposed or final rule. The regulatory flexibility analysis determines the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to state the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

DoD hereby certifies that the Protocol will not have a significant economic impact on a substantial number of small entities. The nature of the Protocol here provides the factual basis for a determination that no regulatory flexibility analysis is required. The Protocol merely provides a procedure by which DoD may prioritize MRS for remediation. No costs are directly imposed on small entities, nor is any action directly required of small entities through this Protocol. Because DoD bears the financial responsibility for remediating MRS, and the source of its funding is Congress, implementation of the Protocol will not directly affect small entities in a financial manner. For the foregoing reasons, DoD believes that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

### C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Section 202 of the UMRA requires that, prior to promulgating proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, the Agency must prepare a written statement, including a cost-benefit analysis of the rule. Under section 205 of the UMRA, DoD must also identify and consider a reasonable number of regulatory alternatives to the rule and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. Certain exceptions to section 205 exist. For example, when the requirements of section 205 are inconsistent with applicable law, section 205 does not apply. In addition, an Agency may adopt an alternative other than the least costly, most cost-effective, or least burdensome in those cases where the Agency publishes with

the final rule an explanation of why such alternative was not adopted. Section 203 of the UMRA requires that the Agency develop a small government agency plan before establishing any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. The small government agency plan must include procedures for notifying potentially affected small governments, providing officials of affected small governments with the opportunity for meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The DoD has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments in the aggregate, or by the private sector in any one year. The term "Federal mandate" means any provision in statute or regulation or any Federal court ruling that imposes "an enforceable duty" upon State, local, or Tribal governments, and includes any condition of Federal assistance or a duty arising from participation in a voluntary Federal program that imposes such a duty. The Protocol does not contain a Federal mandate because it imposes no enforceable duty upon State, Tribal or local governments. DoD is responsible for funding munitions responses and imposes no costs on other entities by prioritizing MRS using this Protocol. DoD recognizes that the State, local or Tribal government may expend funds to conduct oversight of the response activities. The Protocol, however, does not require such oversight. To the degree such oversight is required, it is required by pre-existing law on which the Protocol has no effect.

### D. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, prohibits a Federal agency from conducting or sponsoring a collection of information that requires OMB approval, unless such approval has been obtained, and the collection request displays a currently valid OMB control number. Nor is any person required to respond to an information collection request that has not complied with the PRA. The term "collection of information" includes collection of information from ten or more persons. The DoD has determined that the PRA does not apply to this regulatory action because, although DoD will collect information on the MRS, it will not use people who

are not agency personnel as the source of such information. Therefore, the PRA does not apply to this Protocol.

### E. 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 Federal agencies to use voluntary consensus for technical standards in its regulatory activities, except in those cases in which using such standards would be inconsistent with applicable law or otherwise impractical. "Technical standards" means performance-based or design-specific technical specifications and related management systems practices. Voluntary consensus means that the technical standards are developed or adopted by voluntary consensus standards organizations. In those cases in which a Federal agency does not use voluntary consensus standards that are available and applicable, the agency must provide OMB with an explanation.

Proposal of this Protocol does not involve performance-based or design-specific technical specifications or related management systems practices. The values for relative risk used in the Relative Risk Site Evaluation module, to the extent they qualify as technical standards, were formed through consensus. The Protocol is therefore in compliance with the NTTAA.

### F. Executive Order 12898: Environmental Justice

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," a Federal agency must, where practicable and appropriate, collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies must then use this information to determine whether their activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

DoD believes that implementation of this Protocol will address environmental justice concerns in several ways. First, the Protocol will address environmental justice by ensuring that prioritization is based primarily on risk to the human health and environment of all populations. The DoD recognizes that prioritization of MRS for response action could result a