abbreviated IRFA can be prepared depending on the severity of the economic impact and the relevant statute's allowance of alternatives.

The Agency has prepared an IRFA for this final rule. In summary, the IRFA describes that a prohibition of vessel sewage discharge in these two zones will apply to any commercial or recreational vessel with on-board toilet facilities that navigates the Hudson River in the described areas. Only commercial vessels are considered small entities with respect to the Regulatory Flexibility Act. All vessels are already subject to the EPA Marine Sanitation Device Standards at 40 CFR Part 140 and the U.S. Coast Guard Marine Sanitation Device Standards at 33 CFR Part 159. These standards prohibit the overboard discharge of vessel sewage in any freshwater lakes, freshwater reservoirs, or other freshwater impoundments whose inlet or outlet is such as to prevent the ingress or egress by vessel traffic subject to this regulation, or in rivers not capable of being navigated, (40 CFR 140.3). In other waters, including the Hudson River, vessels with on-board toilets shall have U.S. Coast Guard certified marine sanitation devices which either retain sewage or treat sewage to the applicable standards. There are three types of marine sanitation devices certified by the U.S. Coast Guard. Type I and Type II devices are both flow-through devices that treat sewage through maceration and disinfection. Type III devices are holding tanks. Vessel sewage is held in tanks until it can be properly disposed of at a pump-out facility, or it may be discharged untreated outside of U.S. territorial waters. Most Type III devices are equipped with a discharge option, in the form of a Y-valve, which allows the boater to discharge the sewage directly overboard, which is legal only outside of U.S. territorial waters. Since the Hudson River is a U.S. territorial water, the discharge of untreated vessel sewage is prohibited under the existing regulations. Today's rule, therefore, will not change the legal requirements for boats with Type III devices. Consequently, the only small entities affected by this rule will be commercial boats with on-board toilets with a Type I or II marine sanitation device which use these approximately 68 miles of the Hudson River. The rule will affect these vessels by requiring retention and pump-out of their sewage, or discharge outside of the designated zones. This rule requires no reporting or record keeping activity on the part of small entities. Because of the cost associated with purchase of portable Type III devices and use of pump-out facilities, and the option to discharge sewage in accordance with Federal standards outside of the zones, this final rule imposes no significant economic impact on a substantial number of small entities.

As mentioned above, NYSDEC submitted the application for these Drinking Water Intake Zones under Section 312(f) of the Clean Water Act—the section that sets national standards for discharges of vessel sewage and prohibits the states or political subdivision thereof from adopting or enforcing any other regulation or standard for vessel sewage discharges. There are several exceptions to this prohibition. Section 312(f)(4)(B) is one of these exceptions. This section was added to the Clean Water Act in 1977 in order to provide the states with an opportunity to have a more stringent standard (i.e., a prohibition) for drinking water intake areas. The Act states, ''Upon application by a State, the Administrator shall, by regulation, establish a drinking water intake zone in any waters within such State and prohibit the discharge of sewage from vessels within that zone.'' EPA wishes to correct its interpretation of CWA section 312(f)(4)(B), as stated in the preamble of the proposed rule at 60 FR 34942. EPA interprets CWA Section 312(f)(4)(B) to give EPA discretion upon application by a state to establish a drinking water intake zone, both with respect to the timing of EPA action on such an application and the substance of such action. There is no mandatory duty for EPA to act upon such an application, as the CWA specifies no date certain for such action. Further, EPA interprets the requirement for states to apply to EPA for the flexibility to promulgate a drinking water intake zone different from that applied for, if EPA believes that a different zone is warranted.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record keeping burden on the regulated community, as well as minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record keeping requirements affecting 10 or more non-Federal respondents be approved by the Office of Management and Budget. Since today's rule would not establish or modify any information and record keeping requirements, it is not subject to the requirements of the Paperwork Reduction Act.

D. Unfunded Mandates Reform Act of 1995

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), P.L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under Section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under Section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in estimated annualized costs of $100 million or more to either State, local, and tribal governments in the aggregate, or to the private sector. All vessels that are equipped with marine sanitation devices and that navigate the Hudson River are already subject to the EPA Marine Sanitation Device Standards at 40 CFR Part 140 and the U.S. Coast Guard Marine Sanitation Device Standards at 33 CFR Part 159. These standards prohibit the overboard discharge of untreated vessel sewage in the Hudson River and require that vessels with on-board toilets shall have U.S. Coast Guard certified marine sanitation devices which either retain sewage or treat sewage to the applicable standards. There are three types of marine sanitation devices certified by the U.S. Coast Guard. Only those vessels that have either one of the two types of certified flow-through devices will be affected by this rule. Those vessels affected by this rule will either retain and pump out treated sewage or discharge outside of the designated zones. It is therefore estimated that the annualized costs to State, local and