

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.

For purposes of assessing the impacts of today's interim final rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and production facilities, which constitute a large percentage of the facilities affected by this rule, generally defines small businesses as having less than \$500,000 in revenues or 500 employees, respectively; (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.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the proposed rule on small entities.” 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This interim final rule will temporarily reduce regulatory burden on all facilities by extending for sixty days the compliance dates in § 112.3(a) and (b). Further, the interim final rule will reduce costs for both existing and new facilities.

After considering the economic impacts of today's interim final rule on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (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 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 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-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation 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 UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this interim final 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 the private sector in any one year. Today's interim final rule would reduce burden and costs on all facilities.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As explained above, the effect of the rule would be to reduce burden and costs for regulated facilities, including small governments that are subject to the rule.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism

implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This interim final rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Under CWA section 311(o), EPA believes that States are free to impose additional requirements, including more stringent requirements, relating to the prevention of oil discharges to navigable waters. EPA encourages States to supplement the federal SPCC program and recognizes that some States have more stringent requirements. 56 FR 54612 (October 22, 1991). This interim final rule would not preempt state law or regulations. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date.

Today's interim final rule would not significantly or uniquely affect communities of Indian tribal governments. Therefore, we have not consulted with a representative organization of tribal groups.

G. Executive Order 13045—Protection of Children From Environmental Health & Safety Risks

Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866; and, (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective