

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, 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.

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or Tribal governments or the private sector. The final rule imposes no enforceable duty on the State or any local or Tribal government or the private sector; rather, this rule promulgates designated uses for certain waterbodies in Kansas which, when combined with State-adopted water quality criteria, constitute water quality standards for those water bodies. The State may use these resulting water quality standards in implementing its water quality control programs. Today's final rule does not regulate or affect any entity and, therefore, is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. The final rule imposes no enforceable requirements on any party, including small governments. Thus, this final rule is not subject to the requirements of section 203 of UMRA.

#### *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 final rule does not have federalism implications. It will 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. The final rule

will not affect the nature of the relationship between EPA and States generally, for the rule only applies to waterbodies in Kansas. Further, the final rule will not substantially affect the relationship of EPA and the State of Kansas, or the distribution of power or responsibilities between EPA and the various levels of government. The final rule will not alter the State's authority to issue NPDES permits or the State's considerable discretion in implementing these water quality standards. Further, this final rule will not preclude Kansas from adopting water quality standards that meet the requirements of the CWA. Thus, Executive Order 13132 does not apply to this final rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local government representatives in developing this rule. EPA had regular communications with KDHE, including KDHE's submission to EPA of over 500 UAAs that EPA considered in developing this rule. In addition, EPA held several meetings and phone calls with representatives from KDHE, other State agencies, and State legislators to discuss any concerns they had regarding the rule's content and EPA's approach to developing the rule. EPA also considered comments submitted by municipalities in its development of today's rule.

#### *F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. In this final action, EPA expressly excludes waters in Indian country.

Thus, Executive Order 13175 does not apply to this rule.

#### *G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045: Protection of Children from Environmental Health 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 and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. This rule establishes water quality standards to meet the requirements of the CWA and the implementing Federal regulations. As part of its proposed rule, EPA specifically invited the public to submit or identify peer-reviewed studies and data indicating these water quality standards are not adequate to protect children's health. No such comments were received.

#### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

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

As noted in the proposed rule, 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