

The purpose of this rule is only to make these methods available to States, Tribes, and municipalities that may want to use them for ambient water monitoring. The costs associated with *Cryptosporidium* and *Giardia* analysis would not be a Federally-mandated cost, but rather would emanate from a State's adoption of ambient monitoring requirements or other identified needs such as evaluation of Best Management Practices (BMPs) or downstream impacts of wastewater treatment plant effluents or other identified needs. The inclusion of these test methods in 40 CFR 136.3 is intended to make these test methods available to States and others for use in water quality monitoring programs. While monitoring for these protozoans may be beneficial since these organisms may be ingested from recreational and source waters, EPA is not establishing any compliance monitoring requirements for these pollutants. Therefore, EPA believes that this rule will 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, Tribal, and local governments and the private sector. Under section 202 of the 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, Tribal, and local 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 the 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 cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of 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 the UMRA a small government agency plan. The plan must provide for the

notification of 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 rule does not contain a Federal mandate for State, Tribal, and local governments or the private sector that may result in expenditures of \$100 million or more for State, Tribal, and local governments, in the aggregate, or the private sector in any one year. This rule makes available testing procedures for *E. coli*, enterococci, *Cryptosporidium*, and *Giardia* that may be used by a State, Territorial, Tribal or local authority for compliance with water quality standards or ambient monitoring requirements when testing is otherwise required by these regulatory authorities. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As discussed above, under the Regulatory Flexibility Act, the economic impact on small entities is anticipated to be small. It would not significantly affect them because any incremental costs incurred are small, and it would not uniquely affect them because it would affect entities of all sizes depending upon whether testing for these bacteria or protozoa is otherwise required by a regulatory authority. Further, monitoring for small entities is generally expected to be less frequent than monitoring for larger entities. Thus, today's rule also is not subject to the requirements of section 203 of the 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. Today's rule promulgates new analytical methods for conducting analysis of ambient water for enumeration of *E. coli*, enterococci, *Cryptosporidium*, or *Giardia*. EPA does not, however, require use of these methods under this rule. Thus, Executive Order 13132 does not apply to this rule.

Although Executive Order 13132 does not apply to this rule, EPA did consult with representatives of State and local governments in developing the proposed regulation. In fact, it was State representatives who requested that EPA include test methods for these biological pollutants in 40 CFR 136.3 because they want to use EPA approved test methods for ambient water monitoring. EPA included a number of test methods currently being used by States for these pollutants in today's rulemaking. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials. No significant concerns were raised by commenters about these methods.

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 9, 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 the 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. Today's rule promulgates new analytical methods for conducting analysis of