

D. Executive Order 13045—Protection of Children From Environmental Health Risks and 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 is determined to be “economically significant” as defined under Executive Order 12866 and 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, EPA 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 EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This Federal plan is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because it is based on technology performance and not on health and safety risks.

E. Unfunded Mandates Reform Act of 1995

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, or tribal 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, local, or 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 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 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.

The EPA has determined that this Federal plan does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The Federal plan merely implements the small MWC emission guidelines and does not impose any new requirements. The Environmental Impact Assessment (EIA) for the small municipal waste combustor emission guidelines (Docket No. A–98–18) shows that the total annual costs of the emission guidelines is about \$68 million per year (in 1997 dollars), starting on the fifth year after the emission guidelines are promulgated. The Federal plan will apply to only a small subset of the units considered in the EIA for the emission guidelines. Thus, this Federal plan is not subject to the requirements of sections 202 and 205 of UMRA. Although the emission guidelines were not subject to UMRA, EPA prepared a cost-benefit analysis under section 202 of UMRA for the 1995 emission guidelines. For a discussion of how EPA complied with UMRA for the 1995 emission guidelines, including its extensive consultations with State and local governments, see the preamble to the 1995 emission guidelines (60 FR 65405–65412, December 19, 1995). Because the emission guidelines are equivalent to the 1995 emission guidelines, no additional consultations were necessary during the reestablishment of emission guidelines for small MWC units. However, public comments were solicited in the process of reestablishing the small MWC emission guidelines and in proposing the Federal plan, providing the opportunity for input from state and local governments and small entities.

F. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The Regulatory Flexibility Act (RFA) generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 the emission guidelines on small entities, a small entity is defined as:

1. A small business in this industry that has a gross annual revenue less than \$6 million;
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; or
3. A small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the Federal plan on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The EPA expects State plans to affect many small MWC units before the final small MWC Federal plan becomes effective. As State plans are submitted and become effective, the Federal plan no longer applies. Therefore, the impact of this Federal plan is expected to be less than the impact identified in developing the MWC emission guidelines.

EPA's analysis indicates eight existing small MWC units (operated by one small business and seven small governments) would be subject to the emission guidelines. In the analysis for the MWC units that are considered small entities, EPA calculated compliance costs as a percentage of sales for business and a percentage of income (total household income) for governments. The average estimated annual compliance cost as a percentage of income is 0.03 percent for the seven small government entities and 39 percent for the one small business. Among the seven potentially affected government entities, the maximum compliance cost was 0.25 percent.

Although this Federal plan will not have a significant economic impact on a substantial number of small entities, EPA has tried to reduce the impact of