

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 regulatory requirements.

EPA has determined that this rule contains 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. EPA revised the unfunded mandates analysis for State costs based on comments received. EPA expanded the categories of costs and increased the unit costs and hour burden while the final rule significantly decreased the number of potential permittees. Because the revisions were largely offsetting, there is little change in the overall burden estimated (\$8 million annually at proposal and \$9 million annually for the final rule). Accordingly, EPA has prepared under section 202 of the UMRA a written statement, which is summarized below. See section 5 of the *Economic Analysis* for the complete section 202 statement.

1. Private Costs

This statement provides quantitative cost-benefit assessment of the federal requirements imposed by today's final rules. In large part, the private sector, not other governments, will incur the costs. EPA estimates total compliance costs to industry of \$326 million per year (pre-tax, 2001 dollars). EPA estimates that the monetized benefits of the final regulations range from \$204 million to \$355 million annually. Section VIII.C.1 of this preamble provides additional information on EPA's analysis. The analysis is provided in section 5 of the *Economic Analysis* and other supporting information is provided in the *Benefits Analysis* supporting the final regulations. Both of these support documents are available in the administrative record for this rulemaking. A summary of these analyses is provided in section's VII and VIII of today's preamble.

2. State Local and Tribal Government Costs

Authorized States are expected to incur costs to update their State NPDES programs to conform to the final rule and implement the revised standards through issuing NPDES permits and inspecting CAFOs to ensure compliance. The total average annual State administrative cost to implement the permit program, approximately \$9 million, will not exceed the thresholds established by the UMRA. The analysis underlying this cost estimate is in the *NPDES Technical Support Document* found in the rule record. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect local or Tribal governments. There are no local or Tribal governments authorized to implement the NPDES permit program and the Agency is unaware of any local or Tribal governments who are owners or operators of CAFOs. Thus today's rule is not subject to the requirements of Section 203 of UMRA.

3. Funding and Technical Assistance Available to CAFOs

The 2002 Farm Bill authorized cost-share funding for six years (2002 through 2007) for EQIP. Funding starts at \$400 million in 2002 and continually increases to \$1.3 billion in the last year. Sixty percent of this funding is to be targeted to animal agriculture, including large and small feedlots, as well as pasture and grazing operations. An operation is eligible for a total of up to \$450,000 over the six year time frame. This funding is open to both CAFOs and AFOs. Being defined as a CAFO does not make you ineligible for this funding.

4. Funding Available to States

States may be able to use existing sources of financial assistance to revise and implement the final rule. Section 106 of the Clean Water Act authorizes EPA to award grants to States, Tribes, intertribal consortia, and interstate agencies for administering programs for the prevention, reduction, and elimination of water pollution. These grants may be used for various activities to develop and carry out a water pollution control program, including permitting, monitoring, and enforcement. Thus, State and Tribal NPDES permit programs represent one type of State program that can be funded by section 106 grants.

Key comments received on Unfunded Mandates relate to the increased cost to farmers and States and the need for funds for CAFO compliance and State permitting. In the discussion above,

EPA outlines the funding available to CAFO owners (EQIP) and to States (CWA section 106 grants) to help meet this rule's mandates.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 19, 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 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. EPA does not consider an annual impact of approximately \$9 million on States a substantial effect. In addition, EPA does not expect this rule to have any impact on local governments.

Further, the revised regulations would not alter the basic State-federal scheme established in the Clean Water Act under which EPA authorizes States to carry out the NPDES permitting program. EPA expects the revised regulations to have little effect on the relationship between, or the distribution of power and responsibilities among, the federal and State governments. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA's policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

During public comment, EPA received comments on its analysis required under the Federalism Executive Order. The comments were that the Agency had underestimated the cost impacts of the rule on States. In response to these comments, EPA reanalyzed the impacts on States.

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

Executive Order 13175, entitled "Consultation and Coordination with