

environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it will have an annual effect on the economy of approximately \$276 million starting in 2000. As such, this action was submitted to OMB for review. Any written comments from OMB to EPA and any written EPA response to those comments are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the ADDRESSES section of this preamble.

EPA does not believe a revised Regulatory Impact Analysis (RIA) is needed for the direct final rule, which, in large part, reinstates the March 22, 1994 rule and which imposes no new costs beyond what costs were estimated in the RIA to the March 22, 1994 rule. The EPA does not anticipate major increases in prices, costs, or other significant adverse effects on competition, investment, productivity, or innovation or on the ability of U.S. enterprises to compete with foreign enterprises in domestic or foreign markets due to the final rule.

In assessing the impacts of a regulation, it is important to examine:

(1) The costs to the regulated community, (2) the costs that are passed on to customers of the regulated community, and (3) the impact of these cost increases on the financial health and competitiveness of both the regulated community and their customers. The costs of this rule to electric utilities are generally very small relative to their annual revenues. (However, the relative amount of the costs will definitely vary in individual cases.) Moreover, EPA expects that most or all utility expenses from meeting NO<sub>x</sub> requirements will be passed along to ratepayers. When NO<sub>x</sub> requirements are fully implemented in the year 2000, consumer electric utility rates are expected to rise by 0.12 percent on average due to this rulemaking. Consequently, the rule is not likely to have an impact on utility profits or competitiveness.

### *B. Unfunded Mandates Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. The budgetary impact statement must include: (i) Identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to State, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and any disproportionate budgetary effects of the mandate; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Agency's prior consultation with elected representatives of State, local, and tribal governments and a summary and evaluation of the comments and concerns presented. Section 203 provides that if any small governments may be significantly or uniquely impacted by the rule, the Agency must establish a plan for obtaining input from and informing, educating, and advising any such potentially affected small governments.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative, for State, local, and tribal governments and the private sector, that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or unless the selection of this alternative is inconsistent with law.

Because this direct final rule is estimated to result in the expenditure by State, local, and tribal governments, in aggregate, or the private sector of over \$100 million per year starting in 2000, EPA has prepared a supplement to the Regulatory Impact Statement in compliance with the Unfunded Mandates Act. EPA summarizes that supplement as follows.

The direct final rule is promulgated under section 407 of the Clean Air Act.

The rule is issued in response to a remand by the U.S. Court of Appeals for the District of Columbia Circuit and, in large part, reinstates the remanded March 22, 1994 rule. Thus, the analysis in the RIA developed in preparation of the March 22, 1994 rule was appropriately considered in response to the requirements of the Unfunded Mandates Act.

Total expenditures resulting from the direct final rule are estimated at: \$69 million (of which less than \$1 million is by State, local, and tribal governments) per year in 1995-1999; and \$276 million (of which \$21 million is by State, local, and tribal governments) per year starting in 2000. There are no federal funds available to assist State, local, and tribal governments in meeting these costs. There are important benefits from NO<sub>x</sub> emission reductions because atmospheric emissions of NO<sub>x</sub> have significant, adverse impacts on human health and welfare and on the environment.

The rule does not have any disproportionate budgetary effects on any particular region of the nation, any State, local, or tribal government, or urban or rural or other type of community. On the contrary, the rule will result in only a minimal increase in average electricity rates. Moreover, the rule will not have a material effect on the national economy.

Prior to issuing the March 22, 1994 rule, EPA provided numerous opportunities, e.g., through the Acid Rain Advisory Committee proceedings, the public comment period, and public hearings, for consultation with interested parties, including State, local, and tribal governments. In general, State and local environmental agencies advocated that EPA adopt more stringent environmental controls while municipally-owned utilities advocated less stringent controls and more compliance flexibility. EPA evaluated the comments and concerns expressed, and the direct final rule reflects, to the extent consistent with section 407 of the Clean Air Act, those comments and concerns. While small governments are not significantly or uniquely affected by the rule, these procedures, as well as additional public conferences and meetings, gave small governments an opportunity to give meaningful and timely input and obtain information, education, and advice on compliance.

The Agency considered several regulatory options in developing the rule. The option selected in the direct final rule is the least costly and least burdensome alternative currently available for achieving the objectives of