

CHAPTER 9

OTHER REGULATORY ANALYSIS REQUIREMENTS

This section addresses the requirements to comply with Executive Order (EO) 12866 and the Unfunded Mandates Reform Act (UMRA), both which require Federal agencies to assess the costs and benefits of each significant rule they propose or promulgate.

Section 9.1 describes the administrative requirements of both EO 12866 and UMRA. Section 9.2 identifies the need for and objective of the rule. Section 9.3 provides a summary of the total social costs of the final regulations. Section 9.4 presents the estimated impacts of the final rule on noncommercial facilities. Section 9.5 summarizes the estimated monetized benefits under the final regulations and provides a comparison of the estimated total social costs and benefits under alternative regulatory options considered by EPA during the development of this rulemaking. A summary is presented in Section 9.6. Much of the information provided in this section is summarized from other sections of this report.

9.1 ADDITIONAL ADMINISTRATIVE AND REGULATORY REQUIREMENTS

9.1.1 Requirements of Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is “significant” and therefore subject to OMB review and the requirements of the Executive Order. Executive Order 12866 defines “significant regulatory action” as one that is likely to result in a rule that may:

- have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.”

This final regulation does not meet the criterion of \$100 million in annual costs for a “significant regulatory action” because the total costs of the rule are estimated to be \$1.4 million (2003 pre-tax dollars). EPA, however, submitted the action to the Office of Management and Budget (OMB) for review.

9.1.2 Requirements of the Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4; UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments as well as on the private sector. Under Section 202(a)(1) of UMRA, EPA must generally prepare a written statement, including a cost-benefit analysis, for proposed and final regulations that “includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate or by the private sector” in excess of \$100 million per year.²⁶ As a general matter, a federal mandate includes Federal Regulations that impose enforceable duties on State, local, and tribal governments, or on the private sector (Katzen, 1995). Significant regulatory actions require OMB review and the preparation of a Regulatory Impact Assessment that compares the costs and benefits of the action.

State government facilities are within the scope of the regulated community for this final regulation. EPA has determined that this rule would not contain 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. The total annual cost of this rule is estimated to be \$1.4 million (2003 pre-tax dollars). Thus, the final rule is not subject to the requirements of Sections 202 and 205 of the UMRA. The facilities which are affected by the final rule are (1) direct dischargers, (2) with flow-through, recirculating, or net pen systems, (3) engaged in concentrated aquatic animal production, and (4) with annual production of more than 100,000 lbs/yr. These facilities would be subject to the requirements through the issuance or renewal of an NPDES permit either from the Federal EPA or authorized State governments. These facilities should already have NPDES permits as the Clean Water Act requires a permit be held by any point source discharger before that facility may discharge wastewater pollutants into surface waters. Therefore, the final rule could require these permits to be revised to comply with revised Federal standards, but should not require a new permit program be implemented.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA is not proposing to establish pretreatment standards for this point source category which are applied to indirect dischargers and overseen by Control Authorities. Local governments are frequently the pretreatment Control Authority but since this regulation proposes no pretreatment standards, there would be no impact imposed on local governments. The requirements of the final rule are not expected to impact any tribal governments, either as producers or because facilities are located on tribal lands. Thus, this final regulation is not subject to the requirements of section 203 of UMRA.

EPA, however, is responsive to all required provisions of UMRA, including:

- Section 202(a)(1)—authorizing legislation (see Section 1.1 of this report and the final rule preamble);
- Section 202(a)(2)—a qualitative and quantitative assessment of the anticipated costs and benefits of the regulation, including administration costs to state and local governments (see Sections 4 and 7 of this report, and a summary provided in this section);

²⁶ The \$100 million in annual costs is the same threshold that identifies a “significant regulatory action” in Executive Order 12866.

- □ Section 202(a)(3)(A)—accurate estimates of future compliance costs (as reasonably feasible; see Section 4.3);
- □ Section 202(a)(3)(B)—disproportionate effects on particular regions, local communities, or segments of the private sector (as discussed in Section 5.1 of this report, EPA identified no disproportionate impacts as a result of this final regulation);
- □ Section 202(a)(4)—effects on the national economy (as discussed in Section 5.2 of this report, because of the small cost associated with the rule, EPA anticipates no discernable effects on the national economy);
- □ Section 205(a)—least burdensome option or explanation required (discussed in this section).
- □ Section 202(a)(5) and 204—consultation with stakeholders (described in EPA’s Notice of Data Availability on the proposed rule (USEPA, 2003) and the preamble to the final rulemaking, which summarize EPA's consultation with stakeholders including industry, environmental groups, states, and local governments.

9.2 NEED FOR THE REGULATION

Section 6.3 presents EPA’s discussion of the need for and the objectives of this final regulation. The concerns include water quality impairment and the introduction of non-native species.

9.3 TOTAL SOCIAL COSTS

9.3.1 Costs to In-Scope Commercial and Noncommercial Facilities

In 2003 pre-tax dollars, annualized costs for all commercial and noncommercial facilities within the scope of the rule are \$1.4 million, see (Table 4-3).

9.3.2 Costs to the Permitting Authority (States and Federal Governments)

NPDES permitting authorities incur administrative costs related to the development, issuance, and tracking of general or individual permits. State and Federal administrative costs to issue a general permit include costs for permit development, public notice and response to comments, and public hearings. States and EPA might also incur costs each time a facility operator applies for coverage under a general permit due to the expenses associated with a notice of intent (NOI), which include costs for initial facility inspections and annual record-keeping expenses associated with tracking NOIs. Administrative costs for an individual permit include application review by a permit writer, public notice, and response to comments. An initial facility inspection might also be necessary.

All of the aquaculture facilities in the scope of this final regulation are currently permitted, so incremental administrative costs of the regulation to the permitting authority are expected to be

negligible. However, Federal and State permitting authorities will incur a burden for tasks such as reviewing and certifying the BMP plan and reports on the use of drugs and chemicals. EPA estimates these costs at approximately \$13,176 for the three-year period covered by EPA's information collection request, or roughly \$4,392 per year. These results show that the recordkeeping and reporting burden to the permitting authorities is less than two-tenths of one percent of the pre-tax compliance cost for the final rule.

9.3.3 Other Social Costs

An estimate of total social costs of the proposed regulations comprises costs that go beyond the compliance costs of constructing and implementing pollution control procedures. Additional monetary costs include the cost of Federal and State subsidies in the form of a tax shield (or lost tax revenue) and costs of administering a regulation (permitting costs). The first type of cost is captured through the use of the pre-tax annualized costs for the industry. For this rule, the difference between estimated pre- and post-tax costs is \$79,000 per year (see table 4-3). Section 9.3.2 described EPA's estimates the second type of cost.

Other types of social costs include possible social costs of worker dislocations, if regulated facilities are projected to close as a result of this rule. These costs comprise the value to workers of avoiding unemployment and the costs of administering unemployment, including the costs of relocating workers, and the inconvenience, discomfort, and time loss associated with unemployment. (The unemployment benefits themselves are, generally, considered transfer payments, not costs).

Another potential social costs include the cost associated with a slowdown in the rate of innovation. In theory, there might be some impact on the rate of innovation to the extent that regulated aquaculture facilities might invest in newer technologies if they did not have to allocate resources to meeting the requirements of the regulations. Generally, however, unless an industry is highly technical, with major investments in research and development, impacts on the rate of innovation are likely to be minimal.

For this rule, EPA did not evaluate these other potential social costs but expects that these costs will be modest. Among commercial facilities, EPA estimates no facility closures as a result of this final regulation. Therefore, in the commercial sector, EPA expects no job losses among commercial facilities because of this rule. Among noncommercial facilities, however, EPA's analysis indicates that 4 noncommercial facilities may be adversely affected and possibly close as a result of this rule. This could result in job losses and worker dislocation at these facilities. Because these are noncommercial entities, it is impossible for EPA to predict what type of changes will actually occur at these facilities. EPA expects no change or slowdown in the rate of innovation in this industry as a rule of this final rule, based on EPA's analysis showing no industry changes in the commercial sector.

9.4 POTENTIAL IMPACTS ON NONCOMMERCIAL FACILITIES

EPA identified 141 Federal, State, Tribal and Alaskan non-profit hatcheries within the scope of the rule. Four of these facilities incur pre-tax annualized costs of compliance that exceed 10 percent of operating budget. Although all states report having fishing license and other user fees, not all state facilities report user fees as contributing to their operating budget. None of four facilities report user fees as a source of funding for the operating budgets, hence, none of them would be able to recoup the increased costs through increased user fees.

9.5 COMPARISON OF COST AND BENEFITS ESTIMATES

Table 9-1 compares the cost of the final rule to the economic value of the environmental benefits EPA is able to monetize (i.e., evaluate in dollar terms). EPA estimates the monetized benefits of the final rule to range from \$66,214 to \$98,616 per year. These benefit estimates are expressed as pre-tax, 2003 dollars and have been calculated assuming a 7 percent discount rate. Monetized benefit categories are primarily in the areas of improved surface water quality (measured in terms of enhanced recreational value). EPA also identified a number of benefits categories that could not be monetized, including reductions in feed contaminants and spilled drugs and chemicals released to the environment, as well as better reporting of drug usage to permitting authorities. These benefits are described in more detail in Sections 7 and 8 of this report and other supporting documentation provided in the record.

**Table 9-1
Estimated Pre-Tax Annualized Compliance Costs and Monetized Benefits**

Production System	Pre-tax Annualized Cost (Thousands, 2003 dollars)
Social Cost	
Flow-through	\$1,385
Recirculating	\$21
Net Pen	\$36
Subtotal (Industry Costs)	\$1,442
State and Federal Permitting Authorities	\$3
Estimated Total Costs	\$1,445
Monetized Benefits	
	\$66 to \$99
Estimated Total Benefits	\$66 to \$99

Note: Totals may not sum due to rounding.

*Monetized benefits are not scaled to the national level.

These estimated benefits compare to EPA's estimate of the total social costs of the final regulations of \$1.4 million per year. These costs include compliance costs to all regulated facilities, and administrative costs to Federal and State governments. EPA estimates the administrative cost to Federal and State governments to implement this rule is about \$3 thousand per year. There may be additional social costs that have not been monetized. These benefit estimates are also expressed as pre-tax, 2001 dollars and have been calculated assuming a 7 percent discount rate. See Section 4.3 of this report for more information.

9.6 SUMMARY

Pursuant to section 205(a)(1)-(2), EPA has selected the "least costly, most cost-effective or least burdensome alternative" consistent with the requirements of the Clean Water Act (CWA) for the reasons discussed in the preamble to the rule. EPA is required under the CWA (Section 304, Best Available Technology Economically Achievable (BAT)) to set effluent limitations guidelines and standards based on BAT considering factors listed in the CWA such as age of equipment and facilities involved, and processes employed. EPA is also required under the CWA (Section 306, New Source Performance Standards (NSPS)) to set effluent limitations guidelines and standards based on Best Available Demonstrated Technology. The preamble to the final rulemaking and Section 6.3 review EPA's steps to mitigate any adverse impacts of the rule. EPA determined that the rule constitutes the least burdensome alternative consistent with the CWA.

9.7 REFERENCES

Katzen. 1995. Guidance for implementing Title II of S.I., Memorandum for the Heads of Executive Departments and Agencies from Sally Katzen, OIRA. March 31, 1995.

USEPA (U.S. Environmental Protection Agency). 2003. Effluent Limitations Guidelines and New Source Performance Standards for the Concentrated Aquatic Animal Production Point Source Category; Notice of Data Availability; Proposed Rule. 40 CFR Part 451. *Federal Register* 68:75068-75105. December 29.