

## **CHAPTER NINE**

### **UNFUNDED MANDATES REFORM ACT**

#### **9.1 INTRODUCTION**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L.104-4, provides for agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally prepares a written statement, including a cost-benefit analysis, for proposed and final rules with “federal mandates” that may result in expenditures to state, local, and 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 UMRA directs 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 might significantly or uniquely affect small governments, including tribal governments, it is to develop a small government agency plan pursuant to section 203 of UMRA. The purpose of the plan is to provide for notifying potentially affected small governments, thus 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.

## 9.2 ANALYSIS AND RESULTS

EPA has determined that some of the regulatory options considered might contain a federal mandate that could result in expenditures of \$100 million or more by state, local, or tribal governments in the aggregate, or to the private sector in any one year. Accordingly, EPA has prepared the written statement in accordance with section 202 of UMRA. This and previous sections of the EA include this statement: Chapter Five of the EA identifies costs and impacts (burdens) on construction firms and governments that would be subject to the options considered, as well as other market affects. Chapter Seven presents estimated monetary benefits that might accrue under the options considered, in accordance with UMRA. This section investigates impacts specifically on small governmental units.

To determine impacts on small governmental units, EPA allocated compliance costs to small governmental units based on the value of construction work done and population. First, EPA determined the percentage of compliance costs that might ultimately fall on government agencies. The value of construction work done by government agencies (federal, state, and local) is approximately 24.7 percent of the total value of construction work done, with the remainder performed by private entities (Census, 2000b). EPA applied the 24.7 percent factor to the total national compliance costs for each option to determine the portion of costs accruing to government entities. The estimated total cost of the Final Action if Option 1 is chosen is approximately \$264.1 million.<sup>1</sup> Based on the value of construction work done, approximately 24.7 percent of this cost, or \$65.2 million, is estimated to be borne by public entities. If Option 2 is chosen, the estimated total cost of the Final Action is \$555.7 million, with public entities incurring approximately \$137.3 million of this total. If Option 4 is chosen, the estimated total cost of the Final Action is \$359.9 million, with public entities incurring approximately \$88.9 million of this total.

EPA then used data on the funding of capital outlays for highway projects to determine the portion of compliance costs accruing to each level of government (i.e., to federal, state, and local entities). Based on these data, approximately 41 percent of government compliance costs is borne by the

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<sup>1</sup> Total compliance cost equals the installation, design, and permitting costs plus operation and maintenance costs. See Chapter Five.

federal government, 34 percent is borne by state governments, and the remaining 25 percent is borne by local governments (FHWA, 2000).

EPA determined that the smallest unit of government potentially affected by the options considered are at the sub-county (i.e., municipal or township) government level. Census data were used to determine financial and other information (e.g., population) for local government entities (Census, 2000a, and Census, 1999). This information was combined with data from several other sources to assess the impacts of the options considered on small government entities; i.e., those serving populations of less than 50,000 (5 USC 601[5]).

To determine the impacts on small local governments, EPA allocated costs based on the population served by local jurisdictions with populations of less than 50,000. Approximately 83 percent of the total U.S. population in 1996 (219 million out of 265 million) lived in areas governed by a municipality or town/township.<sup>2</sup> Of those served by these sub-county governments, approximately 43 percent (114 million) lived in areas served by municipal or town/township governments with populations of less than 50,000 (Census, 1999). Therefore, EPA estimated that 43 percent of local government compliance costs affect projects undertaken by small government entities.

EPA compared the local government share of compliance costs against several financial indicators to determine the extent of the impacts on small governmental units. The indicators used were total revenues, capital outlay, and capital outlay for construction only. In all cases, compliance costs were less than 0.21 percent of the financial measure, indicating no significant impact on small governmental units. The calculations are shown in Table 9-1.

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<sup>2</sup> The remaining portion of the total U.S. population (i.e., those not served by municipal or town/township governments) might be served only by a county government, a special district government, or some other form of local government not covered by the census report.

**Table 9-1. Impacts of Regulatory Option Compliance Costs on Government Units  
(millions, constant 2002 dollars)**

Government Component	Option 1		Option 2	Option 4
	Costs	As Percent of Total Costs	Costs	Costs
Total Compliance Costs	\$264.1	100.00%	\$555.7	\$359.9
Private Compliance Costs (75.3%) <sup>a</sup>	\$198.9	75.30%	\$418.4	\$271.0
Public Compliance Costs (24.7%) <sup>a</sup>	\$65.2	24.70%	\$137.3	\$88.9
Federal (41.07%) <sup>b</sup>	\$26.8	10.14%	\$56.3	\$36.5
State (34.29%) <sup>b</sup>	\$22.4	8.47%	\$47.1	\$30.5
Local (24.64%) <sup>b</sup>	\$16.1	6.09%	\$33.8	\$21.9
Small Government Entities (43.11%) <sup>c</sup>	\$6.9	2.62%	\$14.6	\$9.4
Total Revenues: Small Government	<b>\$103,641</b>		<b>\$103,641</b>	<b>\$103,641</b>
Compliance Costs as % of Total Revenues	0.01%		0.01%	0.01%
Capital Outlay: Small Government	<b>\$11,262</b>		<b>\$11,262</b>	<b>\$11,262</b>
Compliance Costs as % of Total Capital Outlay	0.06%		0.13%	0.08%
Construction Outlay Only: Small Government	<b>\$6,903</b>		<b>\$6,903</b>	<b>\$6,903</b>
Compliance Costs as % of Small Government Construction Outlay	0.10%		0.21%	0.14%

<sup>a</sup> Based on value of construction work done by government entity. 1997 Census of Construction.

<sup>b</sup> Based on the percent of capital outlay for highways funded by governmental unit. 1999 FHWA Conditions and Performance Report to Congress.

<sup>c</sup> Based on the percent of U.S. population living in municipalities or towns/townships serving <50,000.

Note: Approximately 83 percent of the U.S. population (or 219,004,000) lives in an area governed by a municipality or a town/township. The remaining population might be served only by a county government, a special district government, or other governmental organization not covered here. Of the 219 million served by these subcounty governments, approximately 114,347,000 (or 43 percent) are served by municipal or town/township governments with populations of <50,000.

Sources: 1997 Census of Governments: Compendium of Government Finances; 1997 Census of Governments: Government Organization; 1999 Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance, Report to Congress; 1997 Census of Construction.

### **9.3 REFERENCES**

FHWA 2000. Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance. Report to Congress. Washington, DC: Federal Highway Administration. May.

U.S. Census Bureau. 1999. 1997 Census of Governments: Government Organization. Volume 1. August.

U.S. Census Bureau. 2000a. 1997 Census of Governments: Compendium of Government Finances. Volume 4. December.

U.S. Census Bureau. 2000b. 1997 Economic Census: Construction—Industry Summary.