

participating States and Tribes may be able to meet the milestones through such measures. However, as a backstop in the event the milestones are not met in this manner, today's rule requires the implementation of a market trading program to ensure that emissions in the relevant region do not exceed the milestones. Today's rule gives the States and Tribes the discretion to allocate emissions credits to sources, as the States and Tribes determine appropriate. Ultimately, the impact on small entities will not be determined by this rule, but rather by how the relevant State or Tribe exercises its discretion in adopting the optional program and allocating emissions credits. We encourage States and Tribes to consider the impact of its market trading program on small entities. Nonetheless, EPA believes that no more than 28 small entities will be affected by this rule, and most likely less, given that EPA does not anticipate that all nine States with the option to participate in this program will do so. We did not receive any public comments regarding the RFA or the Small Business Regulatory Enforcement Fairness Act of 1996. The EPA continues to believe that today's rulemaking will not have a significant economic impact on a substantial number of small entities.

#### *D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule 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, of \$100,000,000 or more \* \* \* in any one year." A "Federal mandate" is defined under section 421(6), 2 U.S.C. 658(6), to include a "Federal intergovernmental mandate" and a "Federal private sector mandate." A "Federal intergovernmental mandate," in turn, is defined to include a regulation that "would impose an enforceable duty upon State, local, or tribal governments," section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is "a condition of Federal assistance," section 421(5)(A)(i)(I). A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the

private sector," with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under section 202 of the UMRA, section 205, 2 U.S.C. 1535, 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.

By incorporating into the regional haze rule the provisions of the Annex for a voluntary emissions reductions program and backstop trading program, EPA is not directly establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. The entire program under 40 CFR 51.309, including today's amendments, is an option that each of the States may choose to exercise. The program is not required and thus is clearly not a "mandate." Thus, EPA is not obligated to develop a small government agency plan, as required under section 203 of UMRA.

The EPA also believes that because today's rule provides those States potentially subject to the rule with substantial flexibility, today's rule meets the UMRA requirement in section 205 to select the least costly and burdensome alternative in light of the statutory mandate for SIPs for visibility protection that address BART. Today's rule provides States and sources with the flexibility to achieve regional SO<sub>2</sub> reductions in a way that is both cost and administratively effective. Sources are given the opportunity to achieve voluntary reductions. If such reductions do not occur, then the rule provides for the establishment of a trading program to achieve targeted emissions reductions. If a trading program is implemented, sources have the flexibility to buy and sell allowances in order to reach emissions reductions milestones in the most cost-effective way. Today's rule, therefore, inherently provides for adoption of the least costly, most-cost effective, and least-burdensome alternative that achieves the objective of this rule.

The EPA believes that this rulemaking is not subject to the requirements of UMRA. For regional haze SIPs overall, it is questionable whether a requirement to submit a SIP revision constitutes a Federal mandate, as discussed in the preamble to the regional haze rule, (64 FR 35761, July 1, 1999). However, today's rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for States, local, or tribal governments or

the private sector. The program contained in 40 CFR 51.309, including today's rule, is an optional program.

#### *E. Executive Order 13132: Federalism*

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 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."

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing a regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts State law, unless EPA consults with State and local officials early in the process of developing the regulation.

Today's 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. As an optional program, today's rule will not directly impose significant new requirements on State and local governments. In addition, even if today's rule did have federalism implications, it will not impose substantial direct compliance costs on State or local governments, nor will it preempt State law.

Consistent with EPA policy, we nonetheless consulted with State and local officials early in the process of developing this regulation, to provide them with an opportunity for meaningful and timely input into its development. These consultations included a working meeting with State and local officials and numerous discussions with committees and forums of the WRAP. In the spirit of Executive Order 13132 and consistent with EPA policy to promote