

communications between EPA and State and local governments, EPA specifically solicited comment on today's rule from State and local officials. We received no comments regarding this executive order from State and local officials or any other public commenters.

As required by section 8(a) of Executive Order 13132, EPA included a certification from its Federalism Official stating that EPA had met the Executive Order's requirements in a meaningful and timely manner, when it sent the draft of this final rule to OMB for review pursuant to Executive Order 12866. A copy of this certification has been included in the public version of the official record for this final rule.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to, among other things, ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the executive order to include regulations that have "substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes."

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal 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 tribal governments, or EPA consults tribal officials early in the process of developing today's regulation. Under section 5(c) of the Executive Order, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless EPA consults with tribal officials early in the process of developing today's regulation.

Today's rule may have tribal implications, but we believe that it will neither impose substantial direct compliance costs on the Tribes nor preempt tribal law. The EPA sought input from potentially affected Tribes before reaching a conclusion on whether this rule will have tribal implications. This was due, in a large part, to the voluntary nature of this program and the uncertainty of potential impacts on Tribes in the event a State or Tribe

chooses to participate in the program. Possible impacts on Tribes choosing to opt into this program are discussed above in unit III of this preamble.

The EPA notes that the WRAP consulted extensively with tribal representatives in the development of the Annex, the document which provided the basis for today's rulemaking. The Annex provides recognition of Tribes throughout the document and there is a specific discussion of tribal issues in Attachment F of the Annex. Today's rulemaking closely mirrors the recommendations of the WRAP and therefore reflects discussions between the WRAP and Western Tribes.

In keeping with EPA policies regarding Tribes and Executive Order 13175, prior to the issuance of the final rule, EPA provided additional opportunities for consultation with tribal officials or authorized representatives of tribal governments on the potential impacts of today's rule on Tribes. After consulting with a tribal representative, EPA provided Tribes with several opportunities to provide comments on today's rulemaking. During the public comment period, EPA met with tribal environmental staff at tribal environmental forums in Portland, Oregon and Sparks, Nevada. Also, during the public comment period, EPA sent letters to all Western Tribes describing the regional haze rules and, in particular, today's rule, alerting them to the public comment period and seeking their opinions on the rulemaking. Finally, EPA staff met with Tribes in the Western United States, that have sources located on their tribal lands, with sources potentially subject to BART requirements. Although EPA did receive public comments on Tribal issues, we did not receive any public comments specific to this executive order.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective

and reasonably feasible alternatives considered by EPA. The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under 5-501 of the Order has the potential to influence the regulation. Today's rule to codify the SO₂ emission reduction program is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risk. There were no public comments received pertaining to this executive order.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211, "Actions That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001), provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as "significant energy actions." Section 4(b) of Executive Order 13211 defines "significant energy actions" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action." Under Executive Order 13211, a Statement of Energy Effects is a detailed statement by the agency responsible for the significant energy action relating to: (i) Any adverse effects on energy supply, distribution, or use including a shortfall in supply, price increases, and increased use of foreign supplies should the proposal or rule be implemented, and (ii) reasonable alternatives to the action with adverse energy effects and the expected effects of such alternatives on energy supply, distribution, and use.

While this rulemaking is a "significant regulatory action" under Executive Order 12866, EPA has determined that this rulemaking is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. In today's rule, if States chose to implement the option provided by 40