

on a substantial number of small entities. This final rule will not impose any requirements on small entities. We believe that there will be little or no impact on small entities as a result of these rule revisions. State, local, and tribal governments are the only entities affected by this action and we expect that most or all of the governments which would have the authority to accept delegation under section 112(l) of the Act are those whose populations exceed 50,000 persons and are thus, not considered "small." In the case of tribal jurisdictions where population will not exceed 50,000 persons, we still believe that there will be little or no impact as a result of these revisions because none currently have air toxics programs. Furthermore, these rule revisions add flexibility and clarity to the existing NESHAP that these governments may choose to implement and enforce and, therefore, eases rather than imposes burdens.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on S/L/T governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to S/L/T governments, in the aggregate, or to the private sector of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if EPA publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in

the development of EPA regulations with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule changes contain no Federal mandates (under the regulatory provisions of title II of the UMRA) for S/L/T governments or the private sector. Because the rule is estimated to result in the expenditure by S/L/T governments of significantly less than \$100 million in any 1 year, we have not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, we are not required to develop a plan with regard to small governments. Moreover, this action clarifies the relationship between EPA and the S/L/Ts who have voluntarily requested delegation of the part 63 NESHAP, so it does not impose any mandates on those entities. Therefore, the requirements of the Unfunded Mandates Reform Act do not apply to this action.

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 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 the regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and Local officials early in the process of developing the regulation.

The changes in today's rulemaking do not have federalism implications. They 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, because this rule only clarifies which portions of the existing NESHAP contain authorities that can be delegated to S/L/T governments and does not create any new requirements for S/L/Ts. In other words, this rulemaking only makes insignificant clarifications to existing NESHAP and is not expected to have any additional impact on the relationship between S/L/Ts and the Federal government. Thus, the requirements of section 6 of the Executive Order do not apply to today's rulemaking.

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 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." We believe that this final rule does not have tribal implications as specified in Executive Order 13175. Because it implements a voluntary program, today's rulemaking imposes no direct compliance costs on these communities. Thus, Executive Order 13175 does not apply to this rule. However, we did inform tribes of the final rulemaking through the Tribal Environmental Newsletter.

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

Executive Order 13045, entitled "Protection of Children From Environmental Health Risks 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 Agency 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 the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in