

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.

Because the entire program under 40 CFR 51.309, including today's amendments, is an option that each of the States may choose to exercise, these revisions to section 309 do not establish any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. The program is not required and, thus is clearly not a "mandate." Moreover, as explained above, today's rule eliminates certain requirements and will overall reduce any regulatory burdens. Accordingly, this rule will not result in expenditures to State, local, and Tribal governments, in the aggregate, or the private sector, of \$100 million or more in any given year. Thus EPA is not obligated, under section 203 of UMRA, to develop a small government agency plan.

We believe 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 direct final rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local or tribal governments or the private sector. In addition, the program contained in 40 CFR 51.309, including today's revisions, 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.

This 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 described above, this rule contains minor revisions to section 309 of the regional haze rule which will reduce any regulatory burden on the States. In addition, section 309 is an optional program for States. The minor revisions to section 309, accordingly, do not directly impose significant new requirements on State and local governments. Moreover, even if today's revisions did have federalism implications, these revisions would not impose substantial direct compliance costs on State or local governments, nor would they preempt State law. Thus, Executive Order 13132 does not apply to this rule.

Consistent with EPA policy, we nonetheless did consult with representatives of State and local governments in developing this rule. This rule directly implements specific recommendations from the WRAP, which includes representatives from all the affected States.

#### *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 develop an accountable process to 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 the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This rule eliminates certain requirements and will overall reduce any regulatory burden on the Tribes. Moreover, the section 309 program is an optional program for Tribes within the same geographic region as the WRAP states. Accordingly, this rule will not have tribal implications. In addition, this rule directly implements specific recommendations from the WRAP, which includes representatives of Tribal governments. Thus, although the rule does not have tribal implications, representatives of Tribal governments have had the opportunity to provide input into development of the recommendations forming its basis.

#### *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 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.

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 section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.