

17th St., NW., Washington, DC 20503, Attention: Desk Officer for EPA. Please include the EPA Docket ID No. OA-2002-0001 in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 24, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by August 25, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

Today's proposed rule is not subject to the RFA, which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. As a grants-related rule, this rule is not subject to the notice and comment requirements of the APA, 5 U.S.C. 553(a)(1). Nor is there any other statute which requires EPA to undergo notice and comment for this rulemaking.

Although this proposed rule is not subject to the RFA, EPA nonetheless will assess the potential of this rule to adversely affect small entities, which include small businesses, small not for profit enterprises and small governmental jurisdictions. At the outset, it is important to note that EPA's DBE Program is aimed at improving contracting opportunities for small businesses owned and controlled by socially and economically disadvantaged individuals, among others (e.g., HBCUs, etc.). Accordingly, EPA believes that this proposed rule would affect a substantial number of small entities.

However, if the proposed exemptions at the \$250,000 level or less from the fair share objective requirements are adopted, EPA believes that the effect on small entities, including small government jurisdictions, would be minimal. Additionally, under this rulemaking proposal, small entity recipients would be able to use State Agency negotiated MBE/WBE objectives if such recipients solicit bids/offers from a substantially similar geographic market as that State Agency.

Accordingly, EPA believes that the economic impact of this rule, if enacted, on small entities should be minimal.

In EPA's view, this rule, if enacted, would not affect the total funds or

business opportunities available to small businesses that seek to work in EPA financial assistance programs. To the extent that the provisions in this rulemaking proposal (e.g., with respect to changes in the methods used to set objectives) lead to different objectives than those under EPA's current program policy, some firms may gain and others lose, business.

EPA is unaware of any data which would enable the Agency at this time to measure the distributive effects of the rulemaking proposal on various types of small entities. We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

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 State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by 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 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. 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 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 why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it 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 regulatory proposals with significant Federal intergovernmental mandates, and informing, educating and advising small governments on compliance with the regulatory requirements.

Today's 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. The UMRA excluded from the definition of "Federal intergovernmental mandate" duties that arise from conditions of federal assistance.

Pursuant to section 203 of the UMRA, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. If the proposed exemptions at the \$250,000 level or less from compliance with the fair share objective requirements are adopted, EPA believes that there would be minimal impacts on small entities, including small government jurisdictions. Additionally, under this rulemaking proposal, small entity recipients would be able to use appropriate State Agency-negotiated MBE/WBE objectives if such recipients solicit bids/offers from substantially the same relevant geographic market as that State Agency. Therefore, this rule does not meet the threshold test for application of Section 203 of UMRA.

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 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 proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State