

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 to State, local, and tribal 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 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 if the Administrator publishes with the final rule an explanation as to 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.

We have determined that today's action does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Although initially the changes in the December 31, 2002 final rule are expected to result in a small increase in the burden imposed upon reviewing authorities in order for them to be included in the State's SIP, as well as other small increases in burden discussed under "Paperwork Reduction Act" in the preamble to the December 31, 2002 final rule, those revisions will ultimately provide greater operational flexibility to sources permitted by the States, which will in turn reduce the

overall burden of the program on State and local authorities by reducing the number of required permit modifications. In addition, we believe the 2002 rule changes will actually reduce the regulatory burden associated with the major NSR program by improving the operational flexibility of owners and operators, improving the clarity of requirements, and providing alternatives that sources may take advantage of to further improve their operational flexibility. Today's action does not increase regulatory burden but merely clarifies two aspects of the 2002 rule changes. Thus, today's action is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons stated above, we have determined that today's action contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of section 203 of the 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."

Today's action 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. While the final rule published on December 31, 2002 will result in some expenditures by the States, we expect those expenditures to be limited to \$331,250 per year. This figure includes the small increase in the burden imposed upon reviewing authorities in order for them to revise the State's SIP. However, the revisions contained in the December 31, 2002 final rule provide greater operational flexibility to sources permitted by the States, which will in turn reduce the overall burden of the program on State and local authorities by reducing the number of required permit modifications. Today's action does not increase regulatory burden but merely

clarifies two aspects of the December 31, 2002 final rule. Thus, Executive Order 13132 does not apply to today's action.

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." Today's action does not have tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

The purpose of the December 31, 2002 final rule is to add greater flexibility to the existing major NSR regulations. Those changes will benefit permitting authorities and the regulated community, including any major source owned by a tribal government or located in or near tribal land, by providing increased certainty as to when the requirements of the NSR program apply. Taken as a whole, the December 31, 2002 final rule should result in no added burden or compliance costs and should not substantially change the level of environmental performance achieved under the previous rules.

EPA anticipates that initially the changes in the December 31, 2002 final rule will result in a small increase in the burden imposed upon Reviewing Authorities in order for them to be included in the State's SIP. Nevertheless, those revisions will ultimately provide greater operational flexibility to sources permitted by the States, which will in turn reduce the overall burden of the program on State and local authorities by reducing the number of required permit modifications. In comparison, no tribal government currently has an approved tribal implementation plan (TIP) under the Clean Air Act to implement the NSR program. The Federal government is currently the NSR permitting authority in Indian country. Thus, tribal governments should not experience added burden from the December 31, 2002 final rule, nor should their laws be affected with respect to implementation of that rule. Additionally, although major stationary sources affected by the December 31, 2002 final rule could be located in or near Indian country and/or be owned or operated by tribal governments, such sources would not incur additional costs or compliance burdens as a result of that rule. Instead, the only effect on such sources should