

### B. Paperwork Reduction Act

This action does not impose an information collection burden under provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* because today's final response to the remand does not establish any new information collection requirements beyond those which are currently required under the Ambient Air Quality Surveillance Regulations in 40 CFR part 58 (OMB #2060-0084, EPA ICR No. 0940.16). Therefore, the requirements of the Paperwork Reduction Act do not apply to today's final action. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

### C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) Any small business, based on the Small Business Administration's size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently

owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. On May 14, 1999, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") remanded the O<sub>3</sub> NAAQS to EPA to consider, among other things, any potential beneficial health effects of O<sub>3</sub> pollution in shielding the public from the "harmful effects of the sun's ultraviolet rays." 175 F.3d 1027 (D.C. Cir., 1999). Today's action provides EPA's final response to that aspect of the Court's remand and reaffirms the 1997 primary O<sub>3</sub> NAAQS. Therefore, this rule does not establish any new regulatory requirements affecting small entities.

### 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 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 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.

As noted above, EPA cannot consider in setting a NAAQS the economic or technological feasibility of attaining ambient air quality standards, although such factors may be considered to a degree in the development of State plans to implement the standards. *See, e.g., Whitman*, 531 U.S. at 471; *ATA I*, 175 F.3d at 1040-43. Accordingly, and for the reasons discussed in the 1996 proposal and 1997 final rule, EPA has determined that the provisions of sections 202, 203, and 205 of the UMRA do not apply to this final action. The EPA acknowledges, however, that any corresponding revisions to associated State implementation plan requirements and air quality surveillance requirements, 40 CFR part 51 and 40 CFR part 58, respectively, might result in such effects. Accordingly, EPA will address unfunded mandates as appropriate when it proposes any revisions to 40 CFR parts 51 and 58.

### 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 final response to the remand 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. The final response to the remand only reaffirms the previously promulgated ozone standard and would not alter the relationship that has existed under the Clean Air Act for 30 years, in which EPA sets NAAQS and the States implement them through submission of SIPs, in accordance with the requirements of the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.