

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.

The EPA has determined that this rule 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. Today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The CAA requires States to develop plans, including control measures, based on their designations and classifications. In this rule, EPA is deferring the effective date of nonattainment designations for certain areas that have entered into compacts with us. This rule is not establishing a specific requirement for States to submit SIPs, nor does it impose any regulatory requirements. However, even if this rule did establish such a requirement, it is questionable whether a requirement to submit a SIP revision would constitute a Federal mandate in any case. The obligation for a State to submit a SIP that arises out of section 110 and part D of the CAA is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

In the proposal, EPA has determined that this rule contains no regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. Nonetheless, EPA carried out consultations with governmental entities affected by this rule, including States and local air pollution control agencies.

#### *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."

This proposed 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. Finally, the CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This proposed rule would not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this proposed rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA discussed the compact program with representatives of State and local air pollution control agencies, as well as the Clean Air Act Advisory Committee, which is also composed of State and local representatives.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

#### *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." This proposed rule does not have "Tribal implications" as specified in Executive Order 13175.

This proposed rule concerns the deferral of the effective date of nonattainment designation of the 8-hour ozone standard in compact areas that do

not meet that standard, but continue to meet compact milestones. The CAA provides for States and Tribes to develop plans to regulate emissions of air pollutants within their jurisdictions. Early Action Compact areas that would be affected by this proposed rule would be required to develop and submit local plans for adoption and implementation of the 8-hour ozone standard earlier than the CAA requires. These plans would be submitted to EPA as SIP revisions in December 2004 rather than in April 2007. The Tribal Authority Rule (TAR) gives Tribes the opportunity to develop and implement CAA programs such as the 8-hour ozone NAAQS, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, they will adopt.

This proposed rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a CAA program to attain the 8-hour ozone NAAQS at this time or has participated in a compact. Furthermore, this proposed rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this proposed rule does nothing to modify that relationship. Because this proposed rule does not have Tribal implications, Executive Order 13175 does not apply.

Although Executive Order 13175 does not apply to this proposed rule, EPA did outreach to Tribal representatives to inform them about the compact program, its impact on designations, and this proposed rule. The EPA supports a national "Tribal Designations and Implementation Work Group" which provides an open forum for all Tribes to voice concerns to EPA about the designation and implementation process for the 8-hour ozone standard. These discussions have given EPA valuable information about Tribal concerns regarding designations and implementation of the 8-hour ozone NAAQS. The EPA has encouraged Tribes to participate in the national public meetings held to take comment on early approaches to the proposed rule. Several Tribes made public comments at the April 2002 public meeting in Tempe, Arizona. The EPA specifically solicits additional comment on this proposed rule from Tribes.