

E. What Are the Consequences if We Finalize This Proposed Finding of Substantial Inadequacy?

If EPA finalizes this SIP call, as proposed, the State would need to submit to EPA a SIP revision providing the necessary assurances that it (or the districts) can fully implement the required NSR and PSD programs within the State. If the State fails to submit the required assurances or if EPA finds the submittal incomplete or disapprovable, sanctions would apply in accordance with CAA sections 179(a) and (b) and EPA regulations at 40 CFR 52.31. There are two types of sanctions: highway funding sanctions (section 179(b)(1)) and offset sanctions (section 179(b)(2)). Pursuant to our regulations at 40 CFR 52.31, offset sanctions will apply 18 months following a finding by EPA under section 179(a); highway funding sanctions would apply six months later.

II. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Office of Management and Budget (OMB) has historically exempted from Executive Order 12866 regulatory actions governing revisions to SIPs. It has been determined that today's proposed call for revisions to the SIP would not, in any event, be a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions.

Today's proposed SIP call would not establish requirements applicable to small entities. Instead, it would require the State of California and several local air districts to develop, adopt, and submit SIP revisions that would provide the necessary assurances that the applicable NSR and PSD programs do not exempt major agricultural sources.

This rule will not have a significant impact on a substantial number of small entities because the rule does not establish requirements applicable to small entities. Therefore, the Administrator certifies that this action will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action proposed does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. The proposed action will require the State of California and several local air districts to revise laws and regulations governing exemptions for agricultural sources. This requirement, even if considered a federal mandate,⁴ would not result in

aggregate costs over \$100 million to either the state or local districts. In addition, this proposed rule, if finalized, will not significantly or uniquely impact small governments.

D. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 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 law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule 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, because it does not impose a new enforceable duty on the State (see *infra* note 1), and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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) of UMRA (2 U.S.C. 658(5)(a)(I)).

⁴ It is unclear whether a requirement to submit a SIP revision would constitute a federal mandate. The obligation for a state to revise its SIP that arises out of sections 110(a) and 110(k)(5) of the CAA is not legally enforceable by a court of law, and at