AGENCY COMPLIANCE WITH TITLE II OF THE UNFUNDED MANDATES REFORM ACT OF 1995

4th Annual Report to Congress from
The Director of the Office of Management and Budget

October 1999

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EXECUTIVE SUMMARY

This report represents OMB's fourth annual submission to Congress on agency compliance with the Unfunded Mandates Reform Act of 1995. It details agency actions during the period from June 1998 through June 1999 to involve State, local, and tribal governments in regulatory decisions that affect them, including expanded efforts to involve them in agency decisionmaking processes.

During the period covered by this report, agencies issued 17 regulations that met the criteria in the Act as "unfunded mandates" because they required expenditures of $100 million or more in any year by State, local, and tribal governments or by the private sector and met the other statutory requirements. Of these, only two regulations were issued that required over $100 million in expenditures by State, local, and tribal governments, both by the Office of Water at the Environmental Protection Agency (EPA). Of the remaining 15 rules, EPA issued six, while the Departments of Transportation (five), Labor (two), and Health and Human Services (two), accounted for the others. Chapter Three discusses each of the 17 regulations that were unfunded mandates under the Act.

At the direction of the President, agencies generally have done even more consulting with State, local, and tribal governments than is required by the Act. Chapter Two of this report details these consultation efforts in a number of key agencies. Each of the ten agencies discussed in Chapter Two has done significant amounts to involve State, local and tribal agencies in their decisionmaking. For example, EPA and the Department of Health and Human Services engaged in particularly extensive consultation efforts over a wide variety of programs, on both formal unfunded mandates as defined by the Act and other rules with intergovernmental impacts.

OMB has designated several ongoing EPA projects as small government pilot projects under the Act. They include cooperative regulatory enforcement agreements, the development of communications aids to reduce the burden of understanding and complying with agency regulations, and efforts to increase small community involvement in regulatory development. Chapter Two contains information on these and other activities that agencies are undertaking to assist small governments.

Agencies also made real progress last year in improving their internal systems to better manage consultations. This has helped them analyze specific rules in ways that reduce costs and increase flexibility for all levels of government and for the private sector, while implementing important national priorities.

AGENCY COMPLIANCE WITH TITLE II OF THE UNFUNDED MANDATES REFORM ACT OF 1995

CHAPTER 1 – BACKGROUND

Over the past two decades, State, local, and tribal governments increasingly have expressed deep-felt concerns about the difficulty of complying with Federal mandates without additional Federal resources. In response, on October 26, 1993, President Clinton signed Executive Order No. 12875 (see Appendix A), which addressed Federal rules and regulations affecting State, local, and tribal governments. The President found that the cumulative effect of unfunded mandates had strained State, local, and tribal budgets. Accordingly, he instructed each Federal agency to:

- not impose nonstatutory mandates unless funds are provided by the Federal Government, or the agency demonstrates to the Office of Management and Budget (OMB) that it has consulted with State, local, and tribal representatives, heard their concerns, accommodated them to the extent possible, and explained why they could not accommodate any remaining concerns; and

- develop an effective process of meaningful and timely communication with State, local, and tribal officials when developing regulatory proposals that contain significant unfunded mandates.

On January 11, 1994, OMB Director Leon Panetta provided guidance to agencies on implementing Executive Order 12875 (see Appendix B). The guidance specified that Federal agency consultations with their intergovernmental partners are to occur as early as feasible. Additionally, such consultations should involve a variety of State, local, and tribal officials. Finally, agencies were instructed to incorporate sound empirical justification for regulations containing unfunded mandates. The justification must address consultations on the expected method of compliance and the direct costs to be incurred (and disaggregation of these costs where possible) by the State, local, or tribal governments in complying with the mandate.

In a further effort to improve intergovernmental relations, Congress passed the Unfunded Mandates Reform Act (the "Act") which President Clinton then signed into law on March 22, 1995 (P.L. 104-4). OMB Director Alice Rivlin sent guidance to the agencies on implementing Title II of the Acton March 31, 1995 (see Appendix C). She then issued further guidance on Section 204 of the Act on September 21, 1995 (see Appendix D).[1]

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[1] On August 5, 1999, President Clinton issued Executive Order 13132 entitled "Federalism." This Executive Order emphasizes consultation with State and local governments and enhanced sensitivity to their concerns. It also establishes specific requirements that Federal

Both the Act and Executive Order 12875 reflect broadly held sentiments within the Executive and Legislative branches of the Federal government on the importance of minimizing unfunded mandates. Over the past four years, agencies have responded to this bipartisan consensus by expanding their consultations with State, local and tribal governments. All agencies have mechanisms in place to implement the Act and the Executive Order. As Chapters Two and Three describe in detail, agencies have shown a willingness to seek input from other governmental entities and respond to their concerns.

Title I of the Act focuses on the Legislative Branch, addressing the processes Congress should follow before enactment of any statutory unfunded mandates. Title II addresses the Executive Branch. To a large extent, it codifies the provisions of Executive Order 12875 on the development of rules and regulations. Like the Executive Order, Title II begins with a general directive for agencies to assess, unless otherwise prohibited by law, the effects of their rules on other levels of government and on the private sector (Section 201). Title II also describes specific analyses and consultations that agencies must undertake for rules that may result in expenditures of over $100 million in any year by State, local, and tribal governments in the aggregate, or by the private sector. Specifically, Section 202 requires an agency to prepare a written statement for intergovernmental mandates that describes in detail the required analyses and consultations on the unfunded mandate. Section 205 requires that for all rules subject to Section 202, agencies must identify and consider a reasonable number of regulatory alternatives, and then generally select from among them the least costly, most cost-effective, or least burdensome option that achieves the objectives of the rule. Exceptions require the agency head to explain in the final rule why such a selection was not made or why such a selection would be inconsistent with law.

Title II requires agencies to "develop an effective process" for obtaining "meaningful and timely input" from State, local, and tribal governments in developing rules that contain significant intergovernmental mandates (Section 204). Title II also singles out small governments for particular attention (Section 203). OMB Director Rivlin's guidelines to agencies on September 21, 1995, regarding these consultations, informed agencies that:

C intergovernmental consultations should take place as early as possible, beginning before issuance of a proposed rule and continuing through the final rule stage, and be integrated explicitly into the rulemaking process;

C agencies should consult with a wide variety of State, local, and tribal officials;

• agencies should estimate direct costs and benefits to assist with these consultations;

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agencies must follow as they develop and carry out policies that affect State and local governments.

C the scope of consultation should reflect the cost and significance of the mandate being considered;

• effective consultation requires trust and significant and sustained attention so that all who participate can enjoy frank discussion and focus on key priorities; and

C agencies should seek out State, local, and tribal views on costs, benefits, risks, and alternative methods of compliance, and whether the Federal rule will harmonize with and not duplicate similar laws in other levels of government

Sections 206 and 208 of the Act direct OMB to send copies of required agency analyses to the Congressional Budget Office (CBO), and to submit an annual report to Congress on agency compliance with Title II. Section 207 calls for the establishment of pilot programs for providing greater flexibility to small governments.

The remainder of this report discusses the results of agency actions in response to the Act and President Clinton's earlier Executive Order 12875. The report covers agency actions taken between June 1998 and July 1999. Since not all agencies take actions that affect other levels of government, this report focuses on the agencies that have regular and substantive interactions on regulatory matters that involve States, localities, and tribes. Chapter Two discusses agency consultation efforts. These include both those efforts required under the Act and the Executive Order and the many actions conducted by agencies above and beyond these requirements; Chapter Three lists and briefly discusses the regulations meeting Title II's $100 million threshold and the specific requirements of Sections 202 and 205 of the Act. Seventeen rules have met this threshold in the past year. Only two regulations were issued that required the preparation of an agency analytical statement because of aggregate expenditures by State, local, and tribal governments.

CHAPTER 2 -- AGENCY CONSULTATION ACTIVITIES

Sections 203 and 204 of the Act require agencies to seek input from State, local, and tribal governments on new Federal regulations imposing significant intergovernmental mandates. This chapter summarizes consultation activities by agencies whose actions significantly affect State, local, and tribal governments in this way.

Ten agencies (Agriculture, Commerce, Education, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, Transportation and EPA)[2] have involved State, local, and tribal governments in their regulatory processes. These agencies have worked to improve the federal government's regulatory focus on its intergovernmental partners.

As the following descriptions indicate, federal agencies are complying with the Act. They have adopted the Act's overall philosophy as evidenced by the wide range of consultations discussed below. Agency consultations have involved both multiple levels of government or individual levels depending on the agency's understanding of the scope and impact of the rule. OMB continues to work with agencies to ensure that the appropriate level or levels of government are consulted.

DEPARTMENT OF AGRICULTURE

The Department has consulted substantially with State, local and tribal governments on regulatory issues. Pertinent activities of two agencies, the Animal & Plant Health Inspection Service and the Food & Nutrition Service, and one coordinating group, the National Rural Development Partnership, are discussed below.

Animal & Plant Health Inspection Service (APHIS)

Karnal Bunt Program

Since the discovery of Karnal bunt, a disease of wheat, in the United States in early 1996, APHIS has published thirty regulatory actions designed to prevent the spread of Karnal bunt into noninfested areas of the United States, to reduce the regulatory burden on affected entities, or to provide information to the public. In its implementing regulations on Karnal bunt, APHIS sought the input of State governments.

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[2] In general, the Departments not listed here (i.e. State, Defense) do not often impose mandates upon States, localities or tribes and so have fewer occasions to consult with other levels of domestic government.

Before each substantive rulemaking, APHIS has consulted with affected States to gather information on what actions should be taken. APHIS conducted public meetings in Arizona, California, the District of Columbia, Missouri, and New Mexico for interested parties, including representatives of State, local, and tribal governments, on actions to control the spread of Karnal bunt. These public meetings afforded APHIS valuable insights to manage and improve the Karnal bunt regulatory program.

By working closely with State government officials, agency personnel have received feedback from the States on the effectiveness of the regulatory program for Karnal bunt. This give-and-take has allowed State and APHIS officials to carry out effective containment and eradication measures to prevent the spread of Karnal bunt while focusing agency resources efficiently.

Currently, APHIS is in the deregulation phase of the Karnal bunt program, reducing the area and number of articles regulated because of Karnal bunt. APHIS has reached this phase in the Karnal bunt program due in large part to the efforts of State governments. Throughout the implementation of the Karnal bunt program, State governments have provided APHIS with needed information, data, and research. Recently this information has helped support decisions to allow certain kinds of deregulation that, in turn, positively affect regulated entities. For example, data provided by the State of Arizona and industry cooperators allowed APHIS to expand the options for treating certain kinds of regulated articles moving from the regulated area. This change to the regulations offered affected entities in the regulated area additional, more convenient treatment alternatives.

Plant Pest Control and Eradication Programs

APHIS continues to work closely with State and county governments to develop appropriate regulations to control or eradicate outbreaks or established populations of several plant pests. In the last twelve months, APHIS has published changes to its regulatory programs for Mediterranean fruit fly, Mexican fruit fly, pine shoot beetle, citrus canker, gypsy moth, Asian longhorned beetle, and imported fire ant with the cooperation of State and county agriculture agencies. County agriculture commissioners, because of their knowledge of affected areas and entities within their counties, have been of particular assistance. They have helped APHIS draw appropriate boundaries for quarantined areas within the States where APHIS conducts these programs. Because APHIS would likely have to quarantine entire States for these pests in the absence of effective State-level control programs, the cooperation of State and county agencies has made it possible for regulatory programs to concentrate on the areas actually affected. This avoids the need to place restrictions on the movement of regulated articles from unaffected areas of each State.

Scrapie Control Regulations

Throughout 1998, APHIS worked closely with State animal health agencies to make changes to the Voluntary Scrapie Flock Certification Program and the interstate movement

regulations that exist to control the spread of the sheep disease, scrapie. In meetings with State Veterinarians and other State agency staff, alternatives to improve these programs APHIS identified the particular concerns of States with large sheep industries. APHIS published an Advance Notice of Proposed Rulemaking in the Federal Register in 1998 based on these discussions, and solicited further State and local government input on the notice.

Food and Nutrition Service (FNS)

Summer Food Service Program Conference

FNS held a conference for the Summer Food Service Program (SFSP) in November 1998. This meeting brought together more than 120 State agency and local administrators, partnering organizations and anti-hunger advocates to discuss practical ways of building community partnerships to enhance the Program. The "listening session" held at the conference by the Under Secretary was an opportunity for States to voice their concerns and provide suggestions on regulations and policies governing SFSP. FNS is using this input in continuing to work to streamline SFSP policies to allow greater flexibility in the administration of SFSP and increase access to meals served under the Program.

WIC Program Partnership

The Food and Nutrition Service (FNS) and the National Association of WIC Directors (NAWD) entered into a Federal/State partnership. They have met numerous times throughout the year to achieve greater standardization of nutritional risk criteria used across States to determine Special Supplemental Nutrition Program for Women, Infants and Children (WIC) applicants nutritional risk eligibility. This input will be vital to any revisions of the risk criteria in the regulations governing this program.

FNS sponsored a series of listening sessions to hear the views of WIC Program stakeholders, including WIC State and local agency directors, on various aspects of program operations and recommendations on improving program policies and regulations.

FNS met several times with NAWD's Funding Committee to discuss the WIC food and nutrition services and administrative funding formulas.

National Rural Development Partnership - (NRDP)

The NRDP, now in its ninth year, continues to play a significant role in USDA outreach to State, local and tribal governments. The NRDP enables rural institutions to work together more effectively and efficiently. The Partnership addresses a broad range of issues (e.g., transportation, health care and housing) which may impact State, local or tribal governments. The ultimate goal of the Partnership is to help people in rural communities improve their quality of life. Since the Partnership's inception in 1990, the Department has played a major role in organizing and

sustaining its operation, including providing administrative and logistic support to the National Partnership Office. The NRDP is important to the Department's Title II compliance because it is organized to provide the comprehensive outreach mechanisms needed to maintain continuing communication with State, local, and tribal governments.

The Partnership has two key organizational components: State Rural Development Councils (SRDCs) and a National Rural Development Council (NRDC). The NRDC consists of senior program managers representing Federal Departments, agencies and national organizations. It provides guidance for the Partnership and works for SRDCs at the National level. This National network also raises awareness of the impact of Federal programs and their rules and regulations on rural areas, and it shares program information and encourages coordination within and among departments. The NRDC has established an Impediments Committee and process which SRDCs can access to relieve Federal barriers that significantly hinder successful application of Federal programs in rural areas. It has reached out to tribal organizations to raise awareness of tribal issues and increase tribal participation at both the National and State levels.

Another collaborative partnership for the NRDP is the September 1998 rural forum developed and delivered in concert with Regions VII and VIII of the Department of Labor, and the nine SRDCs in those regions. The two-day forum: "Rural Issues in Welfare to Work" brought together 200 state and local practitioners with federal, state, tribal and private organizations in a dialogue on welfare to work implementation in rural areas. The forum participants and presenters exchanged successful strategies for providing transportation, child care, training, and employment opportunities in the unique circumstances of rural areas--small dispersed populations, a lack of economies of scale, large distances and sparse resources.

DEPARTMENT OF COMMERCE

The Department regularly consults with State, local, and tribal governments concerning actions of the Department that might impact its intergovernmental partners. For instance, the National Oceanic and Atmospheric Administration (NOAA) consults with State, local, and tribal governments in the National Marine Sanctuary designation process. Sanctuary Advisory Councils (SAC) are established to provide constituents greater input into the Sanctuary designation process. The SAC members represent a variety of local user groups, and the public and State, local, and tribal jurisdictions. The SAC provides a public forum, working to enhance communications and providing a conduit for bringing the concerns of user groups and stakeholders to the attention of NOAA.

In another example, the Department has issued a Secretarial Order on Tribal Rights and the Endangered Species Act (ESA). The Order clarifies the Department’s responsibilities when implementation of the ESA will or may affect Indian lands, tribal trust resources, or the exercise of tribal rights. Under the Order, the Department is to carry out its responsibilities under the ESA in a manner harmonizing its Federal trust responsibility to tribes, tribal sovereignty, and statutory missions of the Department. The Order also strives to ensure that Indian tribes do not bear a

disproportionate burden for the conservation of listed species.

Because of the unique government-to-government relationship between Indian tribes and the United States, the Department and affected Indian tribes have established and sustained partnerships to promote the conservation of sensitive species and the health of the ecosystems upon which they depend. Moreover, the Department may create intergovernmental agreements with an affected Indian tribe. These would formalize agreements on such projects as land and resource management, multi-jurisdictional partnerships, cooperative law enforcement, and guidelines to accommodate Indian access to and traditional use of natural products.

Currently the National Marine Fisheries Service (NMFS) is preparing to create just such a partnership with those tribes that will be affected by the proposed rule establishing "Critical Habitat for Steelhead in the Pacific Northwest." The designation excludes Indian lands on reservations within the range of three Columbia basin steelhead pursuant to the Secretarial Order on Tribal Rights and the ESA. The Department plans further consultation with affected tribes. The goal of these consultations will be to seek the participation of the affected Indian tribes to the maximum extent practicable by providing the affected tribes adequate opportunities to participate in data collection, consensus seeking, and associated processes.

DEPARTMENT OF EDUCATION

The Department of Education regularly obtains input from State, local, and tribal governments. One such example is the way in which the Department worked to amend the regulations governing the State Vocational Rehabilitation (VR) Services Program, to implement changes in the Rehabilitation Act of 1973, as amended, by establishing evaluation standards and performance indicators for the State VR services Program.

State agencies, and the public, provided a great deal of input to the Rehabilitation Services Administration (RSA) in amending the State VR Services Program. The Department consulted with the rehabilitation community, including the States, during the development of the current proposed evaluation standards and performance indicators. The Department also held a public meeting, attended by State officials, to discuss issues on new proposed evaluation standards and performance indicators. The Commissioner of the Department's Rehabilitation Services Administration has also discussed the new proposed indicators several times with various members of the rehabilitation community, including State officials.

In October 1998, the Department published a proposed rule that contains evaluation standards and performance indicators that reflected the input received through the Department's consultation efforts. The Department is now analyzing the comments it received in response to the NPRM, many of which the States submitted. When the final rule is published, the Department expects a favorable reaction, as a direct result of the Department's outreach efforts.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

The Department of Health and Human Services actively coordinates its policies and programs with other levels of government across its operating divisions, as outlined below. HHS' active consultations on intergovernmental regulation are especially noteworthy.

Food and Drug Administration (FDA)

To date, FDA is participating in well more than 100 Partnership Agreements with a state or groups of states within a particular region to address various regulatory issues. These partnerships strengthen federal-state relationships, and provide valuable information exchanges between FDA and states in solving public health problems.

A good example of a partnership with a single state is FDA's partnership with Montana's Department of Public Health and Human Services. Under this partnership, FDA and Montana established working arrangements for mutual planning and sharing of reports for inspections, investigations, and analytical findings related to food firms operating in Montana.

A good example of a multi-state partnership is the AIDS Health Fraud Task Force. This task force is an ongoing grassroots initiative between FDA and ten states. FDA formed this task force to combat fraudulent activities aimed at AIDS patients through public education campaigns. This task force has set up telephone hot lines, newsletters, public service announcements, exhibits and videos to educate patients with AIDS and help them make informed choices. Though not a law enforcement body, patients with AIDS can report suspected fraud to this task force which in turn refers the case to the appropriate state or federal authority. Patients also can call their local task force member to get information on legitimate treatments.

As part of the President's Food Safety Initiative, FDA has begun to participate in its largest federal-state cooperative effort. FDA envisions that by the year 2009 there will be a national integrated food safety system in place to address a variety of food safety issues such as a foodborne disease outbreak. FDA held a meeting in September 1998 which included representatives from the Center for Disease Control and Prevention, the U.S. Department of Agriculture, all 50 states, Puerto Rico and the District of Columbia. The purpose of this meeting was to develop recommendations and implementation plans for improving intergovernmental cooperation in this area. The discussions centered on the need for better cooperation between federal, state, and local governments to improve communication, optimize resources, develop a protocol for media activities, develop uniform data collection and national food laboratory standards.

Health Care Financing Administration (HCFA)

<u>Collaboration with National Association of State Insurance Commissioners (NAIC)</u>

The NAIC represents the insurance commissioners of 55 States and U.S. territories. Commissioners meet quarterly to discuss common issues and develop model acts and regulations that States often adopt, in full or in part. HCFA staff regularly attend these meetings to provide guidance on health insurance reform efforts under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Medigap issues. Since the summer of 1997, the NAIC has provided HCFA time and space at its regular quarterly meetings to meet with insurance officials from those States implementing the Federal fallback provisions of HIPAA. HCFA also meets with other States to listen to questions, concerns, and suggestions on HIPAA implementation.

HCFA staff have also worked closely with various NAIC working groups, task forces and committees on issues of common interest. During the past year, HCFA staff provided considerable input to the NAIC's Market Conduct Examination Handbook working group as part of that working group's efforts to incorporate HIPAA standards into the Handbook for 1999. The working group accepted most of HCFA's suggestions and completed its action on these standards at the NAIC's winter meeting in December 1998. As a result of the excellent working relationships between HCFA staff and the NAIC's market conduct handbook working group, HCFA was able to extend technical advice to all the States that are enforcing HIPAA themselves.

HCFA staff also regularly attend meetings of the Medicare Supplement Working Group of the NAIC's Senior Issues Task Force to discuss issues related to Medigap insurance. A major task over the past year has involved incorporating the Medicare+Choice changes and subsequent Medigap changes required by the Balanced Budget Act of 1997 (BBA) into the NAIC model regulation for Medicare supplement policies. By April 29, 1999, all States were responsible for adopting standards that are at least as stringent as the new BBA requirements in the revised NAIC model.

Indian Health Service

The Indian Child Protection and Family Violence Prevention Act mandates the issuance of a regulation establishing character standards for individuals in child care programs whose responsibilities involve regular contact with or control over Indian children. A draft of this regulation was presented for comment at the l4th Annual National Indian Health Board Consumer conference. IHS provided a copy to the tribal leader of each federally recognized tribe for review and comment. IHS made several significant changes as a result of tribal input, including the modification of several important definitions. The rule was published in the Federal Register on March 28, 1999.

Substance Abuse and Mental Health Services Administration (SAMHSA)

In an effort to improve relations with States over the implementation of the Community Mental Health Services and the Substance Abuse Prevention and Treatment Block Grants, SAMHSA worked with the National Association of State Alcohol and Drug Abuse Directors and

the National Association of State Mental Health Program Directors on legislative proposals to increase State flexibility in the use of the funds while creating accountability based on performance. SAMHSA is actively working with the congressional committees of jurisdiction to have these proposals enacted.

SAMHSA continues to work with the same organizations representing States on what performance measures would be used as part of a performance-based system. They have made significant advancements largely because of the willingness of both the Federal and State governments to work on identifying the measures to use, the data elements to collect, and the definitions of those data elements.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Although HUD has not issued any rules over the last year that contain unfunded mandates, HUD often has consulted with State, local and tribal governments to help the Department in issuing regulations that are comprehensible, flexible, minimally burdensome and cost-effective, or to find ways other than rulemaking to address issues of concern. Below are examples of HUD's consultation process in action.

One Stop Mortgage Center Initiative

HUD and the U.S. Department of Treasury are sponsoring a series of consultation meetings with representatives of Indian tribes, Alaska Native communities, Federal agencies, and the private sector to solicit ideas and comments in the implementation of President Clinton's "One Stop Mortgage Center Initiative."

Very few Native Americans own their homes on reservations. Access to capital has been a problem. Private banks are often reluctant to make conventional loans because of concerns about ownership of the land. The Federal government holds much tribal land in trust for the tribe. As difficult as it is for Native Americans to obtain a conventional loan, it is nearly as difficult to obtain a government-insured loan. All loans, conventional or government-insured, must be approved by several Federal agencies involved in the loan, including the U.S. Bureau of Indian Affairs. The paperwork can be burdensome, time-consuming, and require numerous signatures.

On August 6, 1998, President Clinton issued a memorandum to the heads of various Federal agencies entitled "Economic Development in American Indian and Alaska Native Communities." The President's memorandum directs the Secretaries of HUD and the U.S. Department of the Treasury, in partnership with local tribal governments and in cooperation with other Federal agencies - particularly the Departments of the Interior, Veterans Affairs, and Agriculture - to initiate a project to help streamline the mortgage lending process in Indian country. The intention is to improve access to mortgage loans on Indian reservations. This project is known as the One Stop Mortgage Center Initiative.

On November 18, 1998, HUD and the Department of Treasury held the first of a series of consultation meetings to assist in the implementation of the President's initiative. HUD held the meetings in various cities throughout the United States. The meeting participants examined all aspects of mortgage lending on Indian land, including administrative procedures, regulations, and applicable Federal statutes, to identify specific lending barriers and develop solutions to them. Several working groups have developed various proposals to eliminate duplicative underwriting requirements, standardize applications, and improve and simplify the appraisal process. Regulatory and legislative relief will be necessary to implement many of these proposals.

Public Housing Drug Elimination Program

On December 16, 1998, HUD met with representatives of public housing agencies and public housing industry groups to discuss the possible future formula allocation of funding under HUD's Public Housing Drug Elimination Program (PHDEP). HUD has been examining formula funding for this program on the basis that formula allocation, as opposed to competitive funding, may provide a more timely, predictable and equitable allocation of grant program funds.

HUD was especially interested in the views of the groups on how a fixed funding mechanism might be structured, how eligibility would be established, and how funding might be allocated. The meeting participants discussed a variety of topics, including the relative need and capacity for PHDEP funding among public housing agencies. The meeting resulted in a valuable exchange of ideas that assisted HUD in the development of its February 18, 1999 Advance Notice of Proposed Rulemaking (ANPR) on the PHDEP. The ANPR announced HUD's intention to develop, through proposed rules, a formula allocation funding for the PHDEP, and solicited public comment before this rulemaking. HUD used the comments in developing the proposed rule which was published on May 12, 1999.

Officer Next Door Program

In 1997, HUD began a pilot program called the "Officer Next Door" program. In an effort to ensure that homeownership opportunities are made available to police officers charged with responsibility of ensuring the safety and well-being of residents in the communities they serve and to help promote safe neighborhoods by furthering community policing efforts, HUD offered HUD-acquired single family homes in revitalization areas available to law enforcement officers at substantial discounts.

Under the program, HUD sells homes it has acquired through foreclosure on defaulted FHA-insured mortgages at half off the FHA-listed price. Each participating officer signs a contract agreeing to live in the home at least three years. Those who receive a FHA-insured mortgage can buy homes with a down payment of as little as $100.

Working with local elected officials, HUD designates neighborhoods as revitalization

areas for participation in the program. The neighborhoods are typically low- and moderate-income areas, have vacant properties, often have high crime rates, but are considered good candidates for economic development and improvement.

In September 1998, Vice President Gore announced that HUD's Officer Next Door program enabled 2,000 law enforcement officers to buy homes at half-price in revitalization neighborhoods and the demonstration program would be expanded to serve 1,000 additional law enforcement officers.

Based on the overwhelming success of the pilot program, HUD has developed regulations to make the Officer Next Door Program a permanent program. HUD has met with local law enforcement officers, organizations that represent law enforcement officers, community groups, and representatives of elected officials to gather information on what changes they would recommend to the program now that they have had more than two years of experience with the pilot program. HUD regulations were published on July 2, 1999.

DEPARTMENT OF INTERIOR

The Interior Department recognizes the need to consult with State, local and tribal governments. DOI remains committed to reducing regulatory burdens and developing regulations that reflect the needs of the communities it serves. DOI bureaus work directly with their constituents and develop procedures and regulations sensitive to local needs and interests. Ongoing consultation with state, local and tribal governments is essential to this process. Examples of consultations are given below for several of DOI's bureaus.

Office of Surface Mining

The Office of Surface Mining (OSM) consulted with the state of New Mexico, the Navajo Nation, and the Hopi tribe, on a proposed rule affecting Indian lands. In addition, OSM met with two organizations representing energy producing States, the Interstate Mining Compact Commision and the Western Insterstate Energy Board on its Ownership and Control proposed rule.

OSM is involved in an active partnership with representatives of tribal governments that have coal mining operations on tribal lands. Specifically the Navajo Nation, the Hopi tribe, and the Crow tribe are involved in the review of all permitting actions and representatives of these tribes participate in the monthly inspections of mining operations and citizen complaint investigations. OSM is consulting with the Navajo Nation, the Crow, Hopi, Northern Cheyenne, Ute Mountain, Ute, and Southern Ute tribes on revising the OSM, Bureau of Indian Affairs, and Bureau of Land Management Memorandum of Understanding for Management of Coal Mining on Indian Lands.

Fish and Wildlife Service

Since 1947, the Fish and Wildlife Service has developed the annual migratory bird hunting regulations utilizing the flyaway waterfowl management system. The flyaway councils with active state representation play a vital role in developing these regulations. The FWS includes states as members of these councils in recognition of the impacts this program has on the states and the estimated five million hunters. By involving the flyaway councils in this process, the resource receives adequate protection, hunters have ample opportunity for utilization, and FWS affords the states maximum flexibility to provide hunting opportunities within their boundaries.

The FWS recently developed a Conservation Order in partnership with States in the central United States to address environmental problems n Northern Canada caused by the overpopulation of Mid-Contintent light geese. The Order provides these states the opportunity to allow their residents to participate in the harvesting of the geese and reduces the costs to the Federal and State governments of controlling the species.

In response to increased governmental and private interest success in the use of Habitat Conservation Plans (HCPs), FWS initiated an addendum to the existing program. HCPs can significantly reduce the burden of the Endangered Species Act on small governments. They provide efficient mechanisms for compliance, distribute the economic and logistic impacts of endangered species conservation among the community, and bring a broad range of landowner activities under the HCPs' legal protection. In addition, the FWS proposed "Safe Harbor" and "Candidate Conservation Agreements with Assurances" policies to further expand benefits to small governments.

DEPARTMENT OF JUSTICE

Although the Department of Justice's obligations may be limited under the formal requirements of the Act, the Department has engaged aggressively in many contacts and consultations with State, local, and tribal governments. The Department has been especially effective in displaying flexibility in responding to the complaints or concerns.

Civil Rights Division

The Americans with Disabilities Act of 1990 (ADA), as a civil rights statute, is exempt from the requirements of the Unfunded Mandates Reform Act. Nonetheless, the Department, through the Civil Rights Division's Disability Rights Section, has undertaken significant outreach efforts to State, local, and tribal governments to increase awareness and understanding of disability rights issues and to promote voluntary compliance with the law.

For example, the Department and the National Association of State Attorneys General (NAAG) have formed a Disability Rights Task Force to promote and protect the rights of

individuals with disabilities pursuant to a Memorandum of Understanding. The task force has been working on several joint policy initiatives on the obligations of public accommodations to provide equal access to persons with disabilities.

Federal Bureau of Investigation

Sexual Offender Registration, Tracking, and Identification

The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act provides a financial incentive for States to establish registration requirements for persons convicted of certain crimes against minors and sexually violent offenses. Following its initial enactment in 1994, the Wetterling Act has been extensively amended by the Federal Megan's Law, the Pam Lyncher Sexual Offender Tracking and Identification Act of 1996, and by Section 115 of the 1998 Commerce/Justice/State Appropriations Act. On January 5, 1999, the Department published revised guidelines implementing the Wetterling Act as amended by these subsequent amendments.

Insights gained by the Department from working with States on Wetterling Act compliance have informed the drafting of the new guidelines. The Department has drafted these guidelines to give States the maximum flexibility in developing conforming registration systems consistent with the statutory provisions.

Office of Justice Programs

The Office of Justice Programs remains committed to maintaining open lines of communications with all constituent groups. OJP continues to seek interaction with State, local and tribal governments and representatives to guide the direction of the agency and better serve the nation. OJP and its offices have frequently contacted various governmental bodies. OJP has employed their suggestions and comments to streamline OJP's operating procedures and to lessen the burden on local governments. Some specific examples of successes are listed below.

Office of Juvenile Justice and Delinquency Prevention

The Office of Juvenile Justice and Delinquency Prevention helps States and units of local government in creating more effective education, training, prevention, diversion, treatment and rehabilitation programs in the area of juvenile delinquency and juvenile justice systems. OJJDP does this through assistance in the planning, establishing, operating, coordinating and evaluating of projects. States submit plans to receive assistance under this program and such plans must involve coordinated planning and review at the State and local level. Members of State advisory groups include a cross-section of the State juvenile justice community. The groups provide for the "active consultation with and participation of units of general government" in the development of the plan.

OJJDP also administers the Juvenile Accountability Incentive Block Grants (JAIBG)

program. In 1999, Congress appropriated $250 million for second year funding of the JAIBG program. The JAIBG program provides funding for use by States and units of local government to promote greater accountability in the juvenile justice system. As required by statute, during the first quarter of FY 1999, OJJDP published for comment in the Federal Register proposed procedures for reporting on the use of funds by a State or Unit of local government participating in the program. OJJDP is using the information received during the comment period, and input gathered from State and local practitioners, to develop a reporting procedure that is simple and efficient. It will utilize a paperless reporting system that will require minimal burden of participants in the JAIBG program.

Finally OJJDP administers the Tribal Youth Program. In FY 1999, Congress appropriated $10 million for the Tribal Youth Program. This program will provide funds for comprehensive delinquency prevention, control, and juvenile justice system improvement for Native American youth. Funds will be available from OJJDP for: programs to reduce, control, and prevent crime both by and against tribal youth; interventions for court-involved tribal youth; for improvement to tribal juvenile justice systems; and prevention programs focusing on alcohol and drugs. The funding mechanism will be a competitive solicitation from OJJDP directly to tribal governments. Development of the program guidance and solicitation material for this program is being accomplished in consultation with representatives from the Native American community. OJJDP has convened a focus group composed of entirely Native American representation to assist with this process. Funds have been set aside to provide direct technical assistance and training for programs that receive funding.

Office for Victims of Crime

The Office for Victims of Crime (OVC) administers the Crime Victims Fund, established by the Victims of Crime Act of 1984. OVC administers grants to State, local, and tribal units of government for crime victim compensation and crime victim assistance, training, technical assistance and demonstration projects to enhance victims' rights and services. OVC's regulatory mandate provides many opportunities for interaction between Federal, State, local and tribal governments. The Office for Victims of Crime (OVC) administers two formula grant programs, the Victim Compensation and the Victim Assistance Programs. OVC regularly provides information and technical assistance on VOCA and monitors State compliance.

OVC interacts with American Indian/Native Alaska tribes through its Children's Justice Act grants for the investigation of child abuse and the Victim Assistance in Indian Country grants for establishing victim assistance programs in remote areas of Indian Country. These grants involve extensive consultations, collaboration, and training with State and local governments and Federal agencies such as U.S. Attorneys' offices, the Judiciary, the FBI, the Bureau of Indian Affairs, and State Compensation and Assistance offices. Activities funded by the grants include defining criminal jurisdiction issues, identifying and applying for financial assistance for victims of crime, coordinating services to victims, and Federal/tribal court coordination.

Violence Against Women Office

The Violence Against Women Office (VAWO) works with State, local, and tribal governments on regulatory issues that relate to the grant programs administered by this office: the STOP Violence Against Women formula grants program, the STOP Violence Against Indian Women discretionary grants program, the Grants to Encourage Arrest Policies, Domestic Violence Victims' Civil Legal Assistance Grants Program, Grants to Combat Violent Crimes Against Women on Campuses, and the Rural Domestic Violence and Child Victimization Enforcement Grant Program. VAWO published for comment, the STOP and Rural grant programs and, as a result of the comments received from interested parties, including governments, made some modifications. For example, VAWO tailored the STOP Violence Against Indian Women discretionary grants program to the specific circumstances of tribal governments. Input was also sought from State Administrators of the STOP formula grants when VAWO designed the required reporting form.

VAWO has convened conferences for the STOP Grant State Administrators, and for other grantees, including governments, to provide information about program and regulatory requirements and to obtain input from the grantees. VAWO has organized two financial workshops for tribal grantees to clarify administrative and financial requirements.

VAWO also continues to convene conferences for its grantees -- including State, local, and tribal governments -- to provide information about program and regulatory requirements and obtain their input.

Office of Community Oriented Policing Services (COPS)

The Office of Community Oriented Policing Services (COPS) is committed to a vigorous and meaningful partnership with state, local and tribal governments in the implementation of the Public Safety Partnership and Community Policing Act of 1994. The COPS program continues to strive for and maintain a strong customer focus in the management and implementation of its grant programs in ways that maximize the benefit for and minimize the burdens on state and local governments.

From the beginning, input from state and local officials shaped the COPS grantmaking process. The COPS Mission Statement emphasizes a commitment to partnerships with state and local communities and public and private organizations throughout the country. COPS developed its initial grant programs to respond to requests from mayors, chiefs and others to permit them to begin the process of hiring and training new police officers during the period in which grant paperwork was prepared and reviewed. COPS designed the one-page COPS FAST application for smaller towns to respond to frustrations with the complexity of the "standard forms." As a result, hundreds of communities that never before had the benefit of a federal grant have been COPS customers. In addition, grantees who have received funds under COPS hiring programs need not submit a new application for subsequent requests to hire new officers. They simply update their original application if necessary and a supplemental award is made.

The process of early consultation and input into fundamental program design issues continues with many COPS grant programs, including COPS' Community Policing to Combat Domestic Violence initiative. COPS also established a National Community Oriented Policing Resource Board, comprising state, local and tribal leaders in the vanguard of community policing. They share their perspectives and recommendations regularly as they develop new programs and existing initiatives and refine services.

In addition, the COPS Legal Division works pro-actively with COPS grantees to help prevent violations of grant requirements before they occur. The Legal Division staff responds directly to grantees who seek guidance about applicable legal requirements of the COPS grant program. They also assist grantees in considering various grant implementation options which comply with COPS' legal requirements while meeting the individual needs of the grantee communities.

Starting in 1998, the Legal Division participated with the Grants Administration Division and the Office of the Comptroller in COPS grantee regional financial management training conferences. COPS staff provides training on the specific compliance requirements of COPS grants and seeks feedback and suggestions from the grantee participants on ways to improve grant compliance materials, advisory and monitoring functions of the COPS Office, and current law enforcement and funding needs. The local impact of these training conferences, which the Office of the Comptroller sponsors, is evidenced by the fact that several grantee participants have subsequently requested the participation of COPS and Office of the Comptroller trainers at regional grantee-sponsored training conferences.

Environment and Natural Resources Division

The Environment and Natural Resources Division (ENRD) works closely with state and local enforcement agencies in enforcing environmental law. The Division has emphasized cooperative enforcement through joint enforcement actions, through training and support of local prosecutors, and in the development of enforcement policy. Specifically, the Division frequently works with state attorneys general and environmental agencies, local prosecutors, the National Association of Attorneys General and the Environmental Council of the States. In addition, the Division coordinates its litigation on behalf of the Secretary of Interior for the benefit of the affected tribes.

The Environmental Enforcement Section carries out many enforcement efforts in cooperation with States and will continue to seek out opportunities to do so in the future. To maximize the opportunities for coordination, the trial attorneys in the Division notify State environmental commissioners and State attorneys general before filing a civil suit in that State, absent exceptional circumstances. In Fiscal Year 1998, the States, tribes, and local governments were awarded, through settlement or judgment, more than $20 million as the result of joint civil enforcement actions concluded during that period. At present, a State or local government is co-plaintiff with the United States in more than thirty civil environmental enforcement actions.

DEPARTMENT OF LABOR

DOL has made it a policy and practice to consult with State, local and tribal governments in promulgating regulations that would have a significant impact on their governments. If a final rule covers such government entities, the Department includes them in its education and compliance assistance efforts.

The following are some examples from DOL agencies of how they involve State, local or tribal governments in rulemaking or in the post-rulemaking education and outreach process.

Mine Safety and Health Administration (MSHA)

MSHA has ongoing working relationships with State mining agencies, the mining industry and labor representatives. MSHA actively seeks input to its proposed standards and regulations from these interests, and involves them in other outreach efforts. For example, in developing its proposed rules affecting metal and nonmetal mines, MSHA estimated that approximately 350 sand and gravel or crushed stone operations are run by State, local, or tribal governments and would be impacted by such rules. MSHA then affirmatively sought the input of any State, local, and tribal governments which might be affected by these rulemakings through several means. These included mailing copies of proposed rules directly to affected entities.

Occupational Safety and Health Administration (OSHA)

OSHA seeks out and considers State and local government views through its own and State Plans promulgation processes. OSHA actively seeks input on proposed standards and regulations from States participating in the program through its regular coordination with its State Plan partners. OSHA meets regularly with its State Plan partners by attending meetings of their organization, the Occupational Safety and Health State Plan Association. At these meetings, specifics of new and proposed standards and regulations are discussed.

Several State Plan officials serve as appointed members of the National Advisory Committee on Occupational Safety and Health (NACOSH) and the Advisory Committee on Construction Occupational Safety and Health (ACCOSH). Here they can assure that these committees give attention to the views of the State Plans in broad national policy deliberations, including standards development.

OSHA invites State representatives to participate as members of OSHA regulatory teams, and to participate in stakeholder meetings where new standards and regulations are discussed. A recent example of the inclusion of State representatives in development of standards is the continued participation on the team working on the ergonomics standard and in several Ergonomics Conferences. Further, the States have participated in many of the local Small Business Regulatory Enforcement Fairness Act Hearings held throughout the Nation. This participation is significant because small businesses and small municipalities often have the same concerns about regulatory burdens. States have also co-hosted and/or participated in stakeholder

meetings on various issues (e.g., indoor air quality, tuberculosis, strategic partnerships). In one instance, the experiences of a number of State programs that already had requirements for safety and health programs in the workplace provided an impetus and foundation for the Federal regulatory effort. In addition, States have continued to participate as members of various OSHA policy development taskgroups (e.g., on arborists, lockout/tagout in the package delivery industry, communication towers, maritime issues).

In January 1998, OSHA published a revision to the Respiratory Protection standard which contains specific provisions for interior structural firefighting. The majority of paid fire fighters are employed by State and local governments, and thus subject to coverage in those States which operate OSHA-approved State Plans. The State Plan States for the most part have now adopted a comparable standard and extended its applicability to public sector firefighters. OSHA has issued several informative documents on this issue directed at the affected public sector groups to make sure the circumstances under which the standard applies, and the exceptions allowed to save lives, are clearly understood. OSHA has also met several times with the National League of Cities and their members, beginning in May 1998, to foster understanding of this issue.

OSHA is working with the State Plan states to revamp the Federal/State relationship and develop a new concept of partnership and Program evaluations based on the States' achievement of their own results-oriented goals within the context of the Government Performance and Results Act. This will allow the States greater flexibility to tailor their programs to State-specific circumstances, including the safety and health of State and local government workers.

Pension and Welfare Benefits Administration (PWBA)

With the enactment of the Child Support Performance and Incentive Act of 1998, additional measures for assisting State child support agencies to obtain group health coverage for children of participants in group health plans covered by the Employee Retirement Income Security Act of 1974 (ERISA) were added to ERISA and the Social Security Act. PWBA has been expending considerable resources in the past and current year, in conjunction with the Department of Health and Human Services, in the establishment of the Medical Child Support Working Group. The goal of this group is to identify impediments to the enforcement of medical child support by State child support enforcement agencies. It will make recommendations to DOL and DHHS on means to reduce or eliminate those impediments. Representatives of State Medicaid and child support enforcement agencies are among the members of the Working Group.

DEPARTMENT OF TRANSPORTATION

The Department of Transportation has long had procedures for ensuring consultation with and meaningful input from State, local and tribal governments ("small governments") on rules that effect them. They have reemphasized the importance of early and effective involvement of State, local and tribal governments since enactment of the Unfunded Mandates Reform Act through various meetings with, and the circulation of summary information to, regulatory officials

throughout the Department.

Federal Aviation Administration

The FAA is continuing to work to address the problem of noise from air tour operations over the Grand Canyon. A rulemaking, "Special Flight Rules in the vicinity of Grand Canyon National Park" is one part of an overall strategy to reduce the impact of noise on the park environment and to assist the NPS in achieving its statutory mandate to provide for the substantial restoration of natural quiet and experience in GCNP (61 FR 69302). Several Native American reservations border the GCNP and several other tribes have cultural ties to the Grand Canyon. DOT and the Department of the Interior (DOI) consulted with these tribes, on a government-to-government basis, concerning the possible effects of the GCNP regulations. Their major concerns were recognition of their sovereignty over the airspace, air access, and potential noise increases over tribal lands and religious/historic/cultural sites. Both DOT and DOI addressed tribal concerns, including the effects of the rule on economic opportunities of the tribes, in preparing the final rule.

The consultation process, which began with the new proposal for reduction of aircraft noise, is continuing. This will include a dialogue in which potentially affected tribes will have the opportunity to identify, on a confidential basis any religious, cultural, or historic area that may be potentially affected by significant noise increases. The FAA has committed to mitigate any such impacts during the development of air tour routes for GCNP.

Federal Highway Administration (FHWA)

The FHWA has many examples where it has consulted with State, local, or tribal governments in the development, review, and revision of regulations and in the development of guidance materials. FHWA promulgated a rule on truck size and weight in December 1998 at the initiation of a state request. In developing regulations implementing the Transportation Equity Act of the 21st Century, FHWA held regional workshops with State and local partners. In its Driver History Initiative published in April 1998, FHWA solicited proposals for State projects to evaluate their citation issuance, conviction process and driver licensing procedures with the goal of improving accurate, timely and complete reporting within and between States. Finally, FHWA is an active participant in the meetings of the American Association of State Highly Transportation Officials.

Federal Railroad Administration

The FRA's Rail Safety Advisory Committee (RSAC) continues to provide a forum for advice and recommendations on safety issues for organizations representing all segments of the railroad community, including State highway and transportation, and public transit officials. This committee has been successful in furthering FRA's goal of serving its customers by improving railroad safety through collaborative regulatory action.

The FRA is also nearing completion of a Final Rule based on recommendations from a working group that included state transportation and public transit officials that proposed comprehensive federal safety standards for railroad passenger equipment.

The FRA has issued an ANPRM to solicit comments and suggestions from the public about a rulemaking to propose federal regulations governing the use of train whistles at grade crossings. Pub. Law 103-440 requires the Secretary to prohibit local whistle bans, except where there is no significant risk of accidents, alternative safety measures are adequate, or use of horn as warning is impractical. As part of the development of a proposal, the FRA conducted an outreach program to promptly share information about the effects of whistle bans with communities where whistle bans are in effect. In addition to issuing press releases and sending informational letters to various parties, FRA met with community officials and participated in town meetings.

Research and Special Programs Administration

Two rulemakings demonstrate RSPA's commitment to consult with and address concerns raised by State, local, and tribal governments on regulatory issues.

Hazardous Materials in Intrastate Commerce

On October 1, 1998, the regulations expanding the scope of the Hazardous Materials Regulations became effective. The effect of this rulemaking is to raise the level of safety in the transportation of hazardous materials by applying a uniform system of safety regulations to all hazardous materials transported in commerce throughout the United Sates. During the development and implementation process, RSPA conducted several outreach sessions throughout the country in an effort to inform and educate those affected by these requirements, including State and local enforcement personnel. Additionally, RSPA sought the assistance of the States in providing outreach to those shippers and carriers within their State's that were newly affected by the HMR. RSPA has also published information to the States and affected industries to assist in their enforcement and compliance efforts.

In addition to outreach efforts, Federal Highway Administration's Motor Carrier Safety Assistance Program provides funding to States (approximately $100 million annually) to adopt and enforce regulations that are consistent with the HMR. This highly successful program results in several million motor carrier vehicle and facility investigations annually.

Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service

In 1998, RSPA established a negotiated rulemaking committee to address issues about the manufacture, maintenance and use of cargo tank motor vehicles used in liquefied compressed gas service. An NPRM was developed by the negotiated rulemaking process. In a negotiated rulemaking, representatives of interests affected by a regulation, worked together to analyze safety issues and identify potential sol utions. The process is intended to give parties the opportunity to find creative solutions, improve the information data base for decision, produce

more acceptable rules, enhance compliance, and reduce the likelihood of court challenges. The negotiated rulemaking committee included representatives from businesses that transport and deliver propane, anhydrous ammonia, and other liquefied gases; manufacturers and operators of cargo tanks and vehicle components; and state and local public safety and emergency response agencies. The members agreed on the specifics of the proposed regulatory program and have reviewed and concurred in the draft NPRM. The proposals are intended to reduce the risk of an unintentional release during unloading, assure prompt identification and control of an unintentional release, and make the requirements easier to understand and comply with. The NPRM was issued in March 1999.

ENVIRONMENTAL PROTECTION AGENCY

The Environmental Protection Agency (EPA) has made effective involvement of State, local, and tribal governments a high priority in developing regulations and policies. Since issuance of Executive Order 12875 in 1994 and the passage of the Unfunded Mandates Reform Act in 1995, EPA has taken significant and noteworthy steps to include States, local, and tribal governments in the development of regulations, policies, and guidance that affects them. Among other steps, EPA has:

1. revised its internal regulatory process to ensure participation by key stakeholders;

2. developed guidance for Agency staff on compliance with UMRA, and for related laws and policies;

3. offered training to Agency staff to help them conduct intergovernmental consultations; and

4. offered technical assistance to agency program staff from the Office of Congressional and Intergovernmental Relations, Office of State/Local Relations in the Office of the Administrator.

Consultation Mechanisms

EPA has chartered a cross-media FACA advisory body, the Local Governments Advisory Committee. Its Small Communities Advisory Subcommittee routinely advises the Agency on issues and concerns, and makes recommendations on regulations, policies, and guidance affecting the development and delivery of environmental services. The Tribal Operations Committee similarly addresses tribal interests. Personnel in EPA program offices regularly work with groups of State, local, and tribal officials to address specific environmental and programmatic issues. Examples include media-specific FACA committees, regulatory negotiation advisory committees, policy dialogue groups, and regulatory reinvention groups.

The Agency continues to work extensively with the States under the National Environmental Performance Partnership System, principally through the Environmental Council of

the States. The objective is to ensure that the States are informed and involved in Agency activities, particularly those affecting State-implemented programs. Most of this work is accomplished through committees that have both State and EPA members, but also through forums that are open to other stakeholders. EPA also works with National Associations with memberships drawn from other critical constituent groups such as the National Governor's Association, National Council of State Legislatures, the U.S. Conference of Mayors, the National Association of Counties, and the National League of Cities. EPA employees regularly attend national meetings and committee/subcommittee meetings of these associations to provide current information on Agency activities, answer questions, and solicit input.

General Outreach Activities

EPA has taken several steps to help State, local, and tribal officials learn about EPA's regulatory plans and actions and to let them know how they can participate in the rule-development process. For example, EPA distributes reprints of the semiannual *Regulatory Agenda* to more than 300 State, local, and tribal government organizations and leaders. EPA also participates in a Federal government-wide State/Local Governments Web site developed with the National Performance Review. In addition, the Agency supports hotlines in both EPA Headquarters and the Regions where callers can get information on a range of topics, including regulatory and compliance information.

Under a cooperative agreement funded by EPA, the International City/County Management Association (ICMA) publishes a newsletter for small governments that covers regulatory and other environmental program activities of interest to them. Since September 1995, ICMA's *Environmental SCAN* has also been published electronically on the Internet. Access is free to anyone interested in local government issues. The ICMA site is linked electronically to EPA's *Federal Register* site so that readers interested in a regulation covered in the newsletter can immediately gain access to the actual text. As part of the project, ICMA has also conducted several workshops for small governments on regulatory and other environmental management topics.

Required Intergovernmental Consultation

EPA engaged in a variety of consultations on rules that met the UMRA $100 million threshold. Highlights of these consultations follow. (Chapter 3 summarizes EPA’s analysis of all such rules issued in the last year).

Office of Water

Disinfectants and Disinfection Byproducts, Final Rule

EPA determined that the federal mandate contained in this rule may result in the expenditure of $100 million or more for State, local and tribal governments, in the aggregate, and the private sector in any one year. Therefore, the Agency consulted extensively with

governmental entities and private concerns affected by this rule through a Regulatory Negotiation Committee chartered under the Federal Advisory Committee Act (FACA), and later a special FACA committee. The Regulatory Negotiation Committee held meetings from 1992 to 1993. The Committee consisted of stakeholders representing State and local governments, public health organizations, public water systems, elected officials, consumer and environmental groups. These stakeholders significantly contributed to the content of the proposed rule.

In 1997, EPA requested comment on four alternative schedules for complying with the first stage of the rule. Most comments from State and local sources showed a preference for the option with the maximum flexibility allowed under the Safe Drinking Water Act. The Agency selected this option for the final rule.

EPA plans to educate, inform and advise small systems, including those run by small governments, about the regulatory requirements. One of the most important components of this process is the Small Entity Compliance Guide (as required by the Small Business Regulatory Enforcement Fairness Act of 1996). This plain language guide will explain what actions a small entity must take to comply with the rule. The Agency is also developing fact sheets that concisely describe various aspects and requirements of this rule. In addition, funding through the Drinking Water State Revolving Fund is available for compliance with this rule. This fund emphasizes loans to small systems to help them comply with EPA regulations.

Interim Enhanced Surface Water Treatment, Final Rule

The FACA committees for the above Disinfectant Byproducts Rule also served to advise EPA on the Surface Water Treatment rule. These two committees affected the substance of the final rule.

One crucial issue pertaining to this rule was the frequency of sanitary surveys. A number of comments on this issue supported the three and five year frequencies for community and non-community water systems, respectively. This schedule was recommended by the FACA Committee. Some State comments, however, expressed concern about resources for carrying out the surveys on such a schedule.

The final rule reflects the Advisory Committee's recommendations, including provisions that allow States to:

1) grandfather surveys done after December 1995 if they address the eight elements that are currently part of existing State/EPA guidance;
2) do sanitary surveys on a five-year schedule instead of a three-year schedule for community water systems that the States determines to be outstanding performers; and
3) carry out survey components in a staged or phased manner within the established frequency.

These provisions in the final rule allow States a great deal of flexibility in prioritizing and implementing the sanitary survey process. This flexibility also allows States to use the compliance process as an effective tool to identify and correct water system deficiencies that could pose a threat to public health.

The Advisory Committee also recommended adoption of the least economically burdensome alternative for compliance with this rule. EPA estimated annual compliance costs for this option at $174 million. The members felt that this option would provide adequate health protection at the lowest cost. EPA incorporated this option as part of the final rule.

To minimize the impact on small government systems, EPA specifically exempted from this rule water systems serving 10,000 or fewer people. EPA recognizes the specific needs of small systems and will develop a separate rule for small systems with their input.

Other Consultation Activities

Although EPA was not required by UMRA to consult with the regulated community on the following rules, consultation was done as a matter of agency policy:

Office of Air and Radiation

FIP and Section 126 Petitions to Reduce Interstate Ozone Transport, Proposed Rules

EPA analyzed the impacts of both of these proposed rules (published in October 1998) on sources of ozone owned by State, local, and tribal governments and private entities. Either of these rules could result in the establishment of enforceable mandates that might create compliance costs greater than $100 million in any one year. To fulfill the UMRA requirements that publicly-elected officials be given meaningful and timely input during regulatory development, EPA sent letters to five national associations whose members include elected officials. The letters provided background information, requested that associations notify their membership of the proposed rulemaking, and encouraged interested parties to comment on the proposed actions. The Agency encouraged written comment and held public hearings on the proposal.

Twenty-three jurisdictions (22 States and the District of Columbia) comprise the Ozone Transport Assessment Group (OTAG) Region. The Agency contacted these jurisdictions through State and national organizations such as the National Governors Association, the National Association of Towns and Townships, and the U.S. Conference of Mayors. The main impact of the proposed rules is on electrical generating units (EGUs). Within the OTAG Region, the States of Massachusetts and South Carolina are the only State governments that own EGUs. Twenty-four municipalities in various OTAG Region States have ownership of EGUs. The Agency provided these State- and municipality-owned utilities and appropriate elected officials with a brief summary of the proposal and the estimated impacts. EPA will consider this input as the action moves toward final rulemaking.

These procedures helped ensure that small governments had an opportunity to give timely input and obtain information on compliance. EPA provided State and municipality-owned utilities and appropriate elected officials with a brief summary of the proposal and the estimated impacts. This phase of the rulemaking also elicited many comments from State and municipal utilities and groups representing utility interests. EPA will consider all comments in the final rulemaking.

Finding and Rulemaking for Certain States for Purposes of Reducing Regional Transport of Ozone, Final Rule

EPA carried out consultations with the State governmental entities affected by this rule. The rulewriters in the Office of Air sent a letter to all the States (22 States and the District of Columbia) potentially affected by this rule and to several municipalities and local governments. The Agency addressed the concerns of the States and other stakeholders in detailed written responses to their comments.

The Ozone Transport Assessment Group Region affected by this rule consists of twenty-two States and the District of Columbia. EPA gave these State governments and some municipalities and local governments a chance to give their input. EPA documents also contain a discussion consistent with the requirements of section 205 of UMRA.

Pulp and Paper (Non-combustion), Final Rule

The Office of Air and Radiation prepared a written statement for this rule (as required by Section 202 of UMRA) summarizing the analyses of costs, benefit and alternatives. The total annualized cost estimate for the private sector is greater than $100 million. EPA determined that this rule will not significantly or uniquely affect any State, local or tribal governments.

Nonetheless, EPA consulted with State and local air pollution control agencies for their input. The consultations focused primarily on implementation issues for State and local governments. EPA's consideration of their comments is reflected in the specifications in the final rule.

In formulating the final rule, EPA considered a number of regulatory alternatives and selected the least costly, most cost effective and least burdensome alternative that was consistent with the requirements of the Clean Air Act. The consultation by EPA with States and localities was invaluable in writing a rule that was both effective and practical.

Office of Prevention, Pesticides, and Toxic Substances

Identification of Dangerous Levels of Lead, Final Rule

The existence of lead hazard standards may influence decisions and actions undertaken by State, local and tribal governments as owners of child occupied facilities. (These actions are, however, not mandated by this EPA regulation.) Consequently, the Agency consulted with

State, local, and tribal governments during the proposed rule process and through the Forum on State and Tribal Toxins Action. EPA received comments from 25 States and 19 local governmental entities. They have used the comments solicited to shape the proposed rule.

EPA also believes that it is important to consider the potential economic impacts of this proposed rule on State, local and tribal governments and individuals. It is difficult to predict all of the intervention activities that such governments might undertake as a result of the new lead hazard standards. The Agency has undertaken economic impact analyses that consider the potential costs and benefit associated with various intervention activities. These potential impacts have been one of the primary concerns in selecting the proposed hazard standards for all residential property. The Agency has considered the potential costs that State, local and tribal governments might experience in enforcing these lead exposure standards. EPA also considered the protection of children's health and the economic burdens associated with this protection.

Office of Solid Waste

Hazardous Waste Combustion Facilities, Final Rule

EPA has attempted to ensure full and effective participation from State, local and tribal governments throughout the regulatory process. Representatives from the States of California, Louisiana, New York and Texas were in the workgroup for this rulewriting. All comments were carefully considered and incorporated where possible in the final rule.

Small Government Pilot Projects

Cooperative Enforcement Agreements

Policy on Flexible State Enforcement Responses to Small Community Violations

In FY 1996, EPA's Office of Enforcement and Compliance Assurance (OECA) issued the Policy on Flexible State Enforcement Responses to Small Community Violations. The policy encourages State's to provide comprehensive compliance assistance to small communities as an alternative to the enforcement response required by EPA's Timely and Appropriate response policies. If a State acts within the broad guidelines of the policy, EPA will generally defer to the State's exercise of its enforcement discretion -- including the State's decision to waive part or all of the normal noncompliance penalties. Under the policy, States will help small communities identify all of their environmental responsibilities and establish a plan for addressing all of their environmental concerns in order of risk-based priority.

Developed as a result of the Agency's ongoing dialogue with small communities, this policy responds to the reality that many small communities may lack the technical, administrative, or financial resources to ensure compliance with environmental regulations. At the same time, many small communities are reluctant to ask the regulator for help because they fear the stigma and expense of an enforcement action if violations are discovered. EPA's policy frees States to

work with small communities in a non-adversarial setting to help the communities achieve and maintain comprehensive environmental compliance without requiring the resource drain of an enforcement action when good faith small communities are found to have violations.

The policy contemplates that the State will offer compliance assistance to a small community that needs help to meet its environmental obligations. If the community cannot correct all its violations quickly, the State will negotiate an enforceable compliance schedule that establishes a specified period for correcting violations on a priority basis. The community is expected to addresses its violations according to the schedule, beginning with those violations that have the greatest potential impact on human health and/or the environment. The State can refrain from initiating an enforcement action and can reduce or waive the penalties that they would normally assess for the violations, if the small community is working toward compliance in accordance with the schedule. If a small community fails to meet its obligations under the negotiated compliance schedule, the policy no longer applies. The State is then expected to address the community's violations in accordance with EPA's enforcement response guidelines. Likewise, the policy does not apply to criminal violations. EPA retains its independent authority to take immediate action if a violation represents an "imminent and substantial endangerment" to public health or the environment.

As of May 1999, eleven Oregon communities have committed to compliance schedules as participants in *Environmental Partnerships for Oregon Communities*. In Nebraska, more than 150 small communities have had their environmental concerns evaluated and compliance strategies developed as part of the *Nebraska Mandates Management Initiative*. The States of Washington, Alaska, Idaho, and Arizona all have programs at various stages of development that are similar to the Oregon program, and EPA expects to be able to report the results soon.

Cooperative Agreement with the Environmental Council of the States

The Environmental Council of the States completed a number of activities to simplify interactions with State and local governments for EPA. Promoting flexible approaches to regulatory compliance for small governments was one of the key priorities of these efforts. For example, ECOS worked to improve communications among States, EPA, and small towns, and to foster cooperation between EPA and the States to reduce reporting requirements. At the beginning of FY 1999, ECOS organized a conference of Federal, State and local government officials concerned with environmental management issues of small towns. The purpose of the conference was to articulate, document and share techniques for supporting small town environmental management efforts at the State level.

Communications Aids

EPA is developing a variety of materials that will ease the comprehension of agency regulations for small governments, leading to reduced burden for small governments in understanding what is required of them.

Small Government Advisory Plan

The Agency's interim Small Government Agency Plan supplements the intergovernmental consultations described above. The Plan outlines the analysis rule writers complete to determine whether the regulatory requirements of a rule might uniquely affect small governments. Under the plan, EPA evaluates such factors as whether small governments will experience higher per-capita costs due to economies of scale, whether they would need to hire professional staff or consultants for implementation, or if they would be required to purchase and operate expensive or sophisticated equipment. EPA publishes the findings under the Small Government Advisory Plan in the Federal Register with proposed and final rules. When there are unique or significant impacts on small governments, a range of actions is taken to inform and assist them.

Guide to Federal Environmental Requirements for Small Governments

EPA also publishes and distributes the small communities guide -- a reference handbook to help local officials become familiar with federal environmental requirements that may apply to their jurisdictions. In the guide, federal regulations are explained in a simple, straightforward manner. Mandated programs described in the guide include those for which small communities have major responsibilities, such as landfills, public power plants, sewerage and water systems. An updated edition of the guide was published in 1998 and a new edition will be published in calendar year 1999.

Regional Guides to Federal Environmental Requirements for Small Governments

EPA Region VIII publishes and distributes a small community reference handbook to help local officials in Colorado, Montana, North and South Dakota, Utah and Wyoming become familiar with federal environmental requirements that may apply to their jurisdictions. In the guide, federal regulations are explained in a simple, straightforward manner. In addition, up to date contact lists for State environmental programs are included. A new edition of the region VIII guide was published in 1999.

Small Community Regulatory Development Involvement

Small Community Outreach Project for the Environment (SCOPE)

EPA's Office of Policy funds a pilot project of the National Association of Schools of Public Affairs and Administration (NASPAA). The core effort of this project has regional schools of public administration meeting with small town leaders on a sub-state regional basis to empower themselves to become better environmental citizens and communities. This process also hopes to minimize the adverse impact of environmental regulations on small governments. This two-year pilot program is currently in its second year.

Evaluation of EPA implementation of UMRA and SBREFA

During December 1998 and January 1999, EPA's small town advisory group gathered information from participants in the UMRA/SBREFA outreach/consultation process. The group focused on the seven rules impacting small communities that have gone through the UMRA/SBREFA process through 1998. The group also gathered relevant EPA internal guidance documents, interviewed EPA program regulation managers, EPA process managers and staff of the Senate Small Business Committee. Based on these efforts, they drafted recommendations to improve the quality of EPA's consultation with very small governments on new environmental regulations. The Agency is currently performing a technical, staff level review of the recommendations.

CHAPTER 3 – A REVIEW OF SIGNIFICANT REGULATORY MANDATES ISSUED IN THE PAST YEAR

Since our last report, Federal agencies have issued 17 rules which were subject to Sections 202 and 205 of the Unfunded Mandates Reform Act because they require expenditures in any year by State, local or tribal governments, in the aggregate, or by the private sector, of at least $100 million. Eight rules were issued by the Environmental Protection Agency (EPA)[3], five by the Department of Transportation, two by the Department of Labor, and two by the Department of Health and Human Services. There were only two rules for which agency analyses demonstrated expected expenditures in any year by State, local or tribal governments, in the aggregate, totaling more than $100 million: EPA's final rule, "National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts" and EPA's final rule, "National Primary Drinking Water Regulations: Interim Enhanced Surface Water Treatment." The remaining rules were covered by the Act because of expected expenditures by the private sector, rather than expected aggregate expenditures by State, local or tribal governments.

In general, OMB worked with the agencies to ensure that the selection of the regulatory option for final rules fully complied with the requirements of Title II of the Act. For proposed rules, OMB often worked with the agency to ensure that they also solicited comment on alternatives. These were generally alternatives that could, in light of further public comment and additional analysis, be shown to be the least costly, most cost-effective, or least burdensome option at the final rule stage. Agency statements regarding compliance with the Act are included with the descriptions of the rules below.

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[3] EPA is not reaching a final conclusion as to the applicability of the requirements of UMRA to its final rule on Regional Haze. According to the preamble, EPA questions whether a requirement to submit a SIP revision constitutes 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 Clean Air Act 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 submission as not creating any enforceable duty within the meaning of section 421(5)(a)(i) of UMRA (2 U.S.C. 658 (5)(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)). Notwithstanding these issues, EPA prepared an analysis and the UMRA statement that would be required by UMRA if its statutory provisions applied. It also has consulted with governmental entities as would be required by UMRA. The rule also provides the States with the flexibility to develop long-term strategies. The regional haze rule, therefore, inherently provides for adoption of the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule. Finally, the analytical statement was submitted to CBO in accordance with Section 206 of UMRA.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Standard Employer Identifier and Security and Electronic Signature Standards (Proposed Rules)

The proposed National Standard Employer Identifier rule would set standards for a national employer identifier and requirements for its use by health plans, health care clearinghouses, and health care providers. The health plans, health care clearinghouses, and health care providers would use the identifier in connection with certain electronic transactions. The use of this identifier could improve the Medicare and Medicaid programs, other Federal health programs and private health programs. It also could improve the effectiveness and efficiency of the health care industry in general, by simplifying the administration of the system and enabling the efficient electronic transmission of certain health information.

The proposed Security and Electronic Signature Standards rule would set standards for the security of individual health information and electronic signature use by health plans, health care clearinghouses, and health care providers. These entities would use the security standards to develop and maintain the security of all electronic individual health information. The electronic signature standard is applicable only with respect to use with the specific transactions defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and when it has been determined that an electronic signature must be used. The use of these standards could improve the Medicare and Medicaid programs, and other Federal health programs and private health programs, and the effectiveness and efficiency of the health care industry in general.

HCFA did a combined analysis for these two rules. In HCFA's analysis, HCFA used conservative figures and considered the effects of the existing trend toward electronic health care transactions. Based on this analysis (a combined analysis for several regulations) they determined that the benefits attributable to the implementation of administrative simplification will accrue almost immediately, but will not exceed costs for health care providers and health plans until after the third year of implementation. After the third year, the benefits will continue to accrue into the fourth year and beyond. The total net savings for the period 1998-20002 will be $1.5 billion (a net savings of $1.7 billion for health plans and a net cost of $0.2 billion for health care providers). The single year net savings for the year 2002 will be $3.1 billion ($1.6 billion for plans, $1.5 billion for providers).

In the regulatory impact analysis accompanying the proposed rule, HHS identified the NPRM as an unfunded mandate on the private sector. HHS referenced the "combined impact analysis" which evaluates the net impacts of all the Health Insurance Portability and Accountability Act standards together. HHS published this analysis in the first proposed HIPAA data standard's rule (National Health Care Provider Identifier.) In addition, pursuant to Section 205 of UMRA, having considered several alternatives outlined in the preamble, HHS concluded that the rule is the most cost-effective alternative for implementation of HHS's statutory objective of administrative simplification.

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration (PWBA) – Summary Plan Description (Proposed Rule)

This proposed rule would amend the existing regulations governing the content of the summary plan description that The Employment Retirement Income Security Act (ERISA) requires to be furnished to employee benefit plan participants and beneficiaries. The amendments propose to implement information disclosure recommendations of the President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry. They seek to ensure that all participants in group health plans receive understandable information about their plan, provider network compensation, pre-authorization and utilization review procedures, coverage for existing and new drugs, and coverage for experimental drugs. In its economic analysis, DOL discussed the benefits associated with the proposed rule and the costs for making revisions to summary plan descriptions using cost estimates believed to be "conservatively high," with peak annual private sector costs in calendar year 2000 of $176 million. PWBA will analyze comments received on the proposed rules and will ensure that the alternative selected in final rule is the least costly and burdensome alternative consistent with achieving the objectives of the rule prior to issuance of the final rule.

PWBA – Claims Procedure (Proposed Rule)

This proposed rule would revise the minimum requirements for benefit claims procedures of employee benefit plans covered under the Employee Retirement Income Security Act (ERISA). It would establish new standards for the processing of group health, disability, pension, and other employee benefit plan claims filed by participants and beneficiaries. The new standards seek to ensure more timely benefit determinations, improved access to information on which benefit determinations are made, and greater assurance that participants and beneficiaries will be afforded a full and fair review of denied claims. DOL estimated that the total estimated cost to the private sector of the proposed regulation in calendar year 2000 would be $155 million (of which $125 million represents start-up costs and $30 million, the level of ongoing annual costs). PWBA will analyze comments received on these proposed rules and will ensure that the alternative selected in final rule is the least costly and burdensome alternative consistent with achieving the objectives of the rule.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA) – Security of Checked Baggage Within the United States (Proposed Rule)

This rule would ensure that aircraft passenger operations with 61 or more seats may use computer assisted screening of bags by electronic means or certain manual procedures. The net present value costs of the rule over a 10-year period (1998 - 2007) are estimated at $2.0 billion.

The security benefits would exceed these costs, if even one terrorist act (such as a Class I explosion) resulting in 380 aviation fatalities (including other types of casualty losses such as aircraft replacement, and market loss) would be avoided over a ten year period.

FAA identified four alternatives to the proposed rule in addition to maintaining the status quo. In the Unfunded Mandates Section of its preliminary Regulatory Impact Analysis, FAA concluded that, of the alternatives analyzed, "the proposed rule provides the largest net benefit."

Federal Highway Administration (FHWA) – Parts and Accessories Necessary for Safe Operation (Trailer Conspicuity) (Proposed Rule - June 1998, Final Rule - March 1999)

This rule requires that truck trailers manufactured before December 1, 1993 have the same reflective tape currently required of truck trailers manufactured after that date. The net present value costs of approximately $228 million are expected to be incurred during a two-year phase-in (1999-2001). Benefits include an estimated 15% reduction in accidents resulting from automobiles hitting truck trailers. The benefits, which include an estimated 10-year reduction of 102 fatalities and 1,766 injuries, as well as property damages, would amount to a monetized present value of $360 million.

The preamble to the rule includes a discussion of FHWA compliance with the Act and states that "FHWA considered several regulatory alternatives and believes that this rule adopts the least burdensome alternative that is consistent with the objectives of the rule."

National Highway and Traffic Safety Administration (NHTSA) – Child Restraint Systems, Child Restraint Anchorage Systems (Final Rule)

To help ensure the proper installation and use of child restraints, this rule establishes a universal child restraint attachment system that requires manufacturers to equip cars with child restraint anchorages (tethered top and rigid base) and to equip child restraints with a means to attach to these anchorages. DOT estimates that 36 to 50 fatalities and 1,231 and 2,929 injuries will be prevented annually. The estimated average total cost of the rule is $152 million annually.

In the preamble to the rule, DOT, in accordance with the act, discusses its assessment of a number of alternative child restraint systems. DOT determined that it "does not believe that there are feasible alternatives to the child restraint anchorage system adopted in this final rule."

NHTSA – Occupant Crash Protection, Improved Air Bags (Proposed Rule)

As part of DOT's program to mitigate the adverse effects of current-design air bags, DOT proposed to upgrade its occupant protection standard. The new standard would require advanced air bags that automatically prevent those effects. The proposal included a performance test for advanced air bags. The proposal required that advances be made in the ability of air bags to cushion and protect occupants of different sizes, belted and unbelted, and required manufacturers to design air bags to minimize risks to infants, children, and other occupants. DOT believes that

advanced air bags will substantially reduce air bag-related deaths and is seeking to secure their introduction while preserving design flexibility.

In analyzing three compliance scenarios, DOT estimated that the costs of the rule would range from $22 to $162 per vehicle, which amounts to a potential total annual cost of up to $2.5 billion for 15.5 million vehicle sales. DOT estimated that the fatalities prevented by the rule would range from 226 to 239 annually. Property damage savings could total up to $158 over the lifetime of an average vehicle. DOT projects a total cost savings of nearly $2.5 billion over the lifetime of a complete model year's fleet.

In response to the requirements of the Act, the preliminary economic assessment of this proposed rule stated that, "since this proposal allows a variety of methods to meet the proposal . . . it may exceed $100 million [in expenditures by automobile manufacturers and/or their suppliers]. The final cost will depend on choices made by the automobile manufacturers." It also stated, "NHTSA tentatively believes that there are not alternatives to the proposal which would accomplish the stated objectives of 49 U.S.C. 30101 et. seq. and which would minimize any significant economic impact of the proposed rule."

ENVIRONMENTAL PROTECTION AGENCY

Persistent Bioaccumulative Toxic Chemicals; Lowering of Reporting Thresholds for the Toxic Release Inventory (TRI)(Proposed Rule)

This rule would add eight new chemicals to the TRI list and significantly lower the reporting thresholds for about a dozen currently listed chemicals. The proposal presents several options. EPA's preferred option, which would establish a 10-pound threshold for most of the 20 chemicals, would add about 17,000 chemical release reports from 9,500 facilities annually, at a projected cost of $126 million in the first year and $70 million in subsequent years. The primary benefit would be "to provide the public with information on toxic chemical releases and other waste management practices." No quantification of benefits was provided.

EPA believed that the rule may contain a significant private sector mandate and thus prepared a statement in accordance with Section 202(a) of the Act concluding that, " . . . these benefits and positive effects significantly outweigh the costs imposed by the rule." EPA also estimated costs to 37 municipalities totaling less than $1 million annually. EPA concluded that the proposed rule does not contain a significant Federal intergovernmental mandate and that it is thus not required to provide a process for prior consultation with State, local, and tribal governments under Section 204. EPA also concluded that there is no available alternative to the proposed rule that would obtain the equivalent information in a less burdensome manner.

National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts (Final Rule)

This rule promulgates health based maximum contaminant level goals (MCLGs) and enforceable maximum contaminant levels (MCLs) for about a dozen disinfectants and byproducts that result from the interaction of these disinfectants with organic compounds in drinking water. The rule will require additional treatment at about 14,000 of the estimated 75,000 residential water systems nationwide. The costs of the rule are estimated at $700 million annually. The quantified benefits estimates range from zero to 9,300 avoided bladder cancer cases annually, with an estimated monetized value of $0 to $4 billion. Possible reductions in rectal and colon cancer and adverse reproductive and developmental effects were not quantified.

EPA determined that the rule contains a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate (municipal governments operate many water systems), and for the private sector in any one year. Accordingly, EPA prepared a written statement under Section 202. The statement includes a summary of authorizing legislation, costs and benefits, macroeconomic effects, and consultations with State, local, and tribal governments. EPA also considered several regulatory alternatives as required by Section 205 and concluded that, "The alternative selected for the Stage 1 Disinfectants/Disinfection Byproducts Rule is the most cost-effective option that achieves the objectives of the rule."

National Primary Drinking Water Regulations: Interim Enhanced Surface Water Treatment (Final Rule)

This rule establishes new treatment and monitoring requirements (primarily related to filtration) for drinking water systems that use surface water as their source and serve more than 10,000 people. The purpose of the rule is to enhance protection against potentially harmful microbial contaminants. (EPA will propose companion rules covering surface water systems serving less than 10,000 people and groundwater systems later this year.) The rule is expected to require treatment changes at about half of the 1,400 large surface water systems, at an annual cost of $300 million. All systems will also have to perform enhanced monitoring of filter performance. The estimated benefits include mean reductions of from 110,000 to 338,000 cases of cryptosporidiosis annually, with an estimated monetized value of $0.5 to $1.5 billion, and possible reductions in the incidence of other waterborne diseases.

EPA determined that the rule contains a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate (municipal governments operate many water systems), and for the private sector in any one year. Accordingly, EPA prepared a written statement under Section 202. The statement includes a summary of authorizing legislation, costs and benefits, macroeconomic effects, and consultations with State, local, and tribal governments. EPA considered several regulatory alternatives as required by Section 205 and concluded that, "The 0.3 NTU limit [a measure of filter performance] was the option that EPA eventually adopted as part of this rule and is the least costly option that

accomplishes the objectives of the Interim Enhanced Surface Water Treatment Rule."

Federal Implementation Plans to Reduce the Regional Transport of Ozone (Proposed Rule)

This rule proposes federal requirements for major stationary sources (e.g. coal burning power plants) to reduce Nitrogen Oxides (NOx) emissions contributing to regional transport of ozone or smog. If finalized, this rule would apply to those States that do not submit acceptable State Implementation Plans (SIPs) as required by the 1998 final NOx SIP Call rule. The RIA for the final NOx SIP call concludes that the national annual cost of possible State actions to comply with the NOx SIP call is approximately $1.7 billion (1990 dollars). The associated benefits that EPA has monetized for the NOx SIP call, for improvements in health, visibility, and ecosystem protection, range from $1.1 billion to $4.2 billion.

EPA is taking the position that the requirements of the Act apply because this action could result in the establishment of enforceable mandates directly applicable to sources (including sources owned by State and local governments) that could result in costs greater than $100 million in any one year. The EPA's analysis, ``Unfunded Mandates Reform Act Analysis for the Proposed Federal Implementation Plan (FIP) Rule Under the Clean Air Act Amendments Title I," is in the docket for this action and examines the impacts of the proposed FIP on Electricity Generating Units (EGUs) and non-EGUs owned by State, local, and tribal governments, and those sources owned by private entities.

EPA notes in the preamble to the proposed rule, "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 proposed rule anticipates providing the flexibility for regulated sources to participate in an emissions trading program. This will minimize the compliance costs for regulated sources.

Findings of Significant Contribution and Rulemaking on Section 126 Petitions for Purposes of Reducing Interstate Ozone Transport (Final Rules)

These final rules represent EPA's determinations on section 126 petitions filed by eight northeastern states, finding that NOx emissions from identified upwind states significantly contribute to ozone nonattainment problems in the petitioning downwind states. The RIA for the final NOx SIP call and section 126 petitions concludes that the national annual cost of possible State actions to comply with the NOx SIP call is approximately $1.7 billion (1990 dollars). The sources named in the section 126 petitions will bear the majority of that total cost. The EPA expects to revise this total cost estimate when it promulgates the NOx trading program for this section 126 rulemaking. It anticipates the total cost for this section 126 rulemaking will not exceed the NOx SIP call estimate. The associated benefits that EPA has quantified for the NOx SIP range from $1.1 billion to $4.2 billion. EPA anticipates that the majority of these quantified and monetized benefits are associated with the section 126 action, because the majority of emission reductions, and the associated exposed populations and ecosystems, are from sources

potentially covered by SIP revisions, and this section 126 action may also cover these sources.

The EPA takes the position that the requirements of UMRA apply because this action could result in the establishment of enforceable mandates directly applicable to sources (including sources owned by State and local governments) that would result in costs greater than $100 million in any one year. The Act 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 proposed rule anticipates providing the flexibility for regulated sources to participate in an emissions trading program. This will minimize the compliance costs for regulated sources.

Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control (Proposed Rule)

This proposed rule would establish tailpipe emissions standards for cars and light trucks up to 8,500 pounds and set standards for sulfur levels in gasoline. EPA estimated that the rule would have total annual costs of just more than $2.5 billion in 2004, increasing to $3.7 billion in 2008, and declining to a level of about $3.5 billion in 2012; following 2012, costs are projected to rise slowly as vehicle sales and fuel consumption grow. These estimates attribute vehicle costs to the point of sale and assume amortization of fuel costs. Thus, the preamble notes that "actual capital investments . . . would occur prior to and during the initial years of the program [i.e., 2004]." The preamble states that "the range of monetary benefits realized after full turnover of the fleet to Tier 2 vehicles would be approximately 3.2 billion to 19.5 billion dollars per year. . . . Benefits of [these] amounts . . . are likely to be realized in the 2015-2020 timeframe. . . . [N]ear-term benefits will be lower . . . because it will take a number of years for Tier 2-compliant vehicles to fully displace older, more polluting vehicles."

The preamble to the proposed rule states that "EPA believes that the proposed program represents the least costly, most cost-effective approach to achieve the air quality goals of the proposed rule."

Phase II Emission Standards for New Nonroad Spark-Ignition Non-Handheld Engines At or Below 19 Kilowatts (Final Rule)

This final rule established new emission standards for gasoline-powered engines rated below 19 kilowatts (25 horsepower) used in non-handheld equipment such as lawnmowers. EPA estimated that the rule would have a total annualized cost of $230 million per year. Although the preamble to the final rule did not provide a monetized assessment of the rule's benefits, it estimated that the rule will result in "an annual nationwide reduction of roughly 395,000 tons of exhaust HC+NOx [combined hydrocarbons and nitrogen oxides] in year 2027 over that expected from [the previous] Phase 1 [standards]. Reductions in CO [carbon monoxide] beyond Phase 1 levels, due to improved technology, are also to be expected by year 2027 . . .. These standards should [also] be effective in reducing emissions of those hydrocarbons considered to be hazardous air pollutants (HAPs), including benzene and 1,3-butadiene." EPA estimated the rule's cost-effectiveness at $852 per ton of HC+NOx, or -$507 per ton of HC+NOx, accounting for fuel

savings from the more efficient engines projected to be used to comply with these standards.

In certifying compliance with the Act, the preamble to the final rule stated that

> "the Agency has appropriately considered cost issues in developing this rule as required by section 213(a)(3) of the Clean Air Act, and has designed the rule such that it will in EPA's view be a cost-effective program. . . . The Clean Air Act requires that standards under section 213(a)(3) result in the greatest degree of emission reductions achievable from available technology, considering costs, lead time, noise, energy and safety factors. While EPA has substantial discretion to weigh these different factors in setting standards under section 213(a)(3), EPA may not simply select the least costly, most cost-effective, or least burdensome method of achieving the objectives of the rule if such method does not obtain the greatest achievable emission reduction. To ensure the cost-effectiveness of this rule and still fulfill the intent of the Clean Air Act, EPA has adopted numerous flexibility provisions that reduce the burden of the Phase 2 program for small volume manufacturers and manufacturers of small volume models and families. In EPA's view, [the discussions of these issues in the preamble] demonstrate that the Agency is adopting the most cost-effective rule allowed under section 213(a)(3) for nonhandheld Phase 2 engines, and the Agency incorporates them into this statement."

Control of Emissions of Air Pollution From Nonroad Diesel Engines (Final Rule)

This final rule established new emission standards for nonroad diesel engines, which are used in most land-based nonroad equipment such as that used in construction and farm applications, and in some marine applications. Without accounting for expected improvements in fuel economy associated with the technology that EPA projected engine makers would use to comply with the rule, EPA estimated that the rule would result in "aggregate costs of about $5 million in the first year the new standards apply, increasing to a peak of about $550 million in 2010 as increasing numbers of engines become subject to the new standards. The following years show declining aggregate costs as the per-unit cost of compliance decreases, resulting in a minimum aggregate cost of about $390 million in 2017. After 2017, stable engine costs applied to a slowly growing market lead to slowly increasing aggregate costs." EPA also subjected this estimate to sensitivity analyses, resulting in estimated annualized costs of $339 to $411 million (compared with the principal estimate of approximately $300 million). The preamble projected that the rule will reduce nitrogen oxide (NOx) emissions by 13,000 to 16,000 tons in 2000, and by 1.5 million to 2.8 million tons in 2020; non-methane hydrocarbon (NMHC) emissions by 9,000 to 11,000 tons in 2000, and by 179,000 to 361,000 tons in 2020; particulate matter emissions by 2,000 tons in 2000 and by 145,000 to 266,000 tons in 2020. Based on the NOx emission reductions, EPA estimated that the rule will reduce indirect particulate matter formation by 110,000 tons in 2020. According to the preamble to the final rule, cost-effectiveness of the program will vary by engine size, ranging from $110 to $2,090 per ton of NOx + NMHC.

In response to the requirements of the Act, the preamble to the final rule stated, "EPA believes that the proposed program represents the least costly, most cost-effective approach to

achieve the air quality goals of the rule."