

waste listings approach for the Office of Solid Waste.

We have prepared two economic support documents for this proposed action. These are: "Economic Assessment for the Proposed Loadings-Based Listing of Non-Wastewaters from the Production of Selected Organic Dyes, Pigments, and Food, Drug, and Cosmetic Colorants," and, "Regulatory Flexibility Screening Analysis for the Proposed Loadings-Based Listing of Non-Wastewaters from the Production of Selected Organic Dyes, Pigments, and Food, Drug, and Cosmetic Colorants." The Economic Assessment focuses primarily on compliance costs to the regulated community, industry economic impacts, and a qualitative benefits discussion. Also covered are findings related to children's health, unfunded mandates, regulatory takings, federalism, tribalism, energy effects, and environmental justice. The Regulatory Flexibility Screening Analysis (RFSA) examines impacts to small entities that may result from this action, as proposed. A summary of findings from this Economic Assessment and the RFSA is presented below. The complete Economic Assessment and RFSA documents are available for public review and comment. These documents are located in the RCRA docket established for this action.

## 2. Need for the Proposed Rule

The Agency has determined that selected constituents found in certain wastes generated by organic dye, pigment, and food, drug, and cosmetic (FD&C) colorant manufacturers may pose unacceptable risks to human health and the environment when improperly disposed in quantities above specified mass loading levels. We believe that the market and other private sector institutions have failed to adequately address pollution issues associated with these wastes.

In most cases of environmentally related market failure, private industry costs of production do not fully reflect the pollution costs to human health and the environment. This may occur when individuals not responsible for the pollution bear the costs in human health and ecological damages. Environmental economists refer to this situation as a negative environmental externality. If negatively impacted individuals are economically, politically, and/or culturally weaker than the polluter, insufficient incentives are likely to exist for polluters to incur the additional costs necessary for implementation of appropriate pollution control measures. Furthermore, weaker parties harmed by the pollution are not likely to obtain

compensation from the polluter due to the high transaction costs, property rights limitations, and the difficulty these citizens may have in establishing a causal relationship between the damage incurred and activity at the polluting facility.

In addition to market failures, we believe that existing State programs designed to protect human health and the environment from unacceptable risks associated with these wastes have resulted in inconsistent protections. Individual State programs often result in a patchwork of inconsistent programs that fail to ensure uniform nationwide protection. Furthermore, variability among State programs covering the management of many wastes tends to reward manufacturers in some states while penalizing manufacturers in other states.

Finally, today's rule implements mandates specifically and explicitly set forth by the U.S. Congress without the exercise of any policy discretion by EPA. This action is proposed under the authority of sections 3001 (b)(1), and 3001(e)(2) of the Hazardous and Solid Waste Amendments (HSWA) of 1984. These sections direct EPA to make a hazardous waste listing determination for wastes from the production of "dyes and pigments."

We believe this proposed rule is necessary, as required under RCRA, in order to sufficiently minimize risk to human health and the environment. We further believe that federal government intervention is necessary as the most efficient means to correct for market failures resulting from pollution caused by these wastes. The proposed rule will effectively internalize much of the costs associated with the existing negative externalities. Furthermore, while the Agency is sensitive to Federalism issues, we believe this proposal will help ensure consistent nationwide protection of human health and the environment from potentially inadequate disposal of these wastes, while, at the same time, establishing a more level economic playing field for all affected manufacturers.

## 3. Consideration of Non-Regulatory Alternatives

Executive Order 12866 recognizes and emphasizes the need for comprehensive, high quality analytical support for all economically significant regulatory actions (as defined under Section 3(f)(1) of EO 12866). While not economically significant, we have completed an Economic Assessment for this proposed action, as discussed above. We have also considered non-regulatory alternatives to this proposed rule. Section 1(b)(3) of

the Executive Order instructs Executive Branch Agencies to consider and assess available alternatives to direct regulation prior to making a determination for regulation. This regulatory determination assessment should be considered, "to the extent permitted by law, and where applicable." The ultimate purpose of the regulatory determination assessment is to ensure that the most efficient tool, regulation, or other type of action is applied in meeting the targeted statutory objective(s).

We are currently subject to both a statutory mandate and a Consent Decree requiring a listing determination for specific dye, pigment, and FD&C production wastes. Because of this legal action, we are not at liberty to address this pollution problem through non-regulatory approaches (unless of course, we determine that these dyes and/or pigments wastes do not warrant listing as hazardous wastes). However, in the spirit of the Executive Order, we have contemplated reasonably feasible non-regulatory alternatives.

Reasonably feasible alternatives to regulation may include diverse tools such as market-based incentives, education program(s), voluntary waste minimization/pollution prevention programs, and targeted negotiated agreements. A non-regulatory approach, such as educational outreach programs would be largely ineffective because the people who are made aware of the potential health risks (e.g., those people living near landfills where these wastes are disposed) have limited ability to reduce exposure without incurring significant costs. While we believe that our mass loadings-based approach may stimulate affected manufacturers to improve waste minimization activities, we recognize that various waste minimization and pollution prevention procedures are currently in place. These procedures, however, may be further stimulated in response to our mass loadings-based approach, thereby helping to reduce the toxic loadings from the wastes of concern. Other programs such as market-based incentives or negotiated agreements would be overly difficult, costly, and cumbersome to implement and monitor due to the quantities of waste involved and generation patterns of these wastes. However, we are open to stakeholder comments on non-regulatory alternatives that, when applied in conjunction with a regulatory option, may help ensure cost-efficient protection of human health and the environment.