

respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number RCRA-2003-0001. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after November 25, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by December 26, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business that is defined by the Small Business Administration by category of business using the North American Industrial Classification System (NAICS) and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

We have identified a total of 37 organic dye, pigment, and FD&C facilities in operation in the U.S., which are owned by 29 different companies that are believed to be generating wastes of concern. Of these, 16 facilities are owned by 15 small companies. This determination is based on the Small Business Administration (SBA) definition of "small business" for these industries, defined as fewer than 750

employees at the corporate level.⁷² A number of these companies are very small, with fewer than 50 total full-time employees. Of the 13 expanded scope companies, one was determined to be a small business.

The cost of compliance impacts for all small companies potentially affected by the rule were found to range from 0.00 percent to 0.52 percent of gross annual corporate revenues, depending upon the level of nonwastewater quantities generated. The percent of annual corporate sales impact for the one expanded scope small business is estimated at 0.08 percent.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not result in significant economic impacts on a substantial number of small dyes and/or pigments production businesses subject to the rule requirements. The reader is encouraged to review and comment on the regulatory flexibility screening analysis prepared in support of this determination: "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." This document is available in the public docket.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other

than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule would not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. The nationwide annual cost for this rule, as proposed, is estimated to be less than five million dollars. This proposed rule does not impose an enforceable duty on any State, local or tribal government; consequently it does not include any Federal mandate with the potential to result in expenditures of \$100 million or more to State, local, or tribal governments. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, the private sector is not expected to incur costs exceeding \$100 million. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act. EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

⁷² "Table of Small Business Size Standards—Matched to North American Industrial Classification System (NAICS) Codes," revised May 5, 2003. Small Business Administration (SBA).