

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule focuses on requirements for facilities generating wastes of concern. Marginal administrative burden impacts may occur to selected States and/or EPA Regional Offices such as increased administrative needs, enforcement requirements, or voluntary information requests. However, this rule, as proposed, will not have substantial direct effects on the States or the relationships between governments in its implementation. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State officials in the development of this rule. State officials were contacted concerning baseline waste management procedures for the wastes of concern.

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

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175,⁷³ entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. The proposed rule focuses on requirements for all regulated sources without affecting the relationships between tribal

governments in its implementation, and applies to all regulated sources, without distinction of the surrounding populations affected. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be economically significant under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposal is not subject to Executive Order 13045 because it is determined to not be economically significant under Executive Order 12866, and does not concern an environmental health or safety risk that we have reason to believe may cause a disproportionate effect on children. Concerned stakeholders are encouraged to submit any relevant data and provide comments on this determination.

H. Executive Order 12898: Environmental Justice

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population" (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and

environmental impacts as a result of EPA's policies, programs, and activities. Our goal is to ensure that all citizens live in clean and sustainable communities. In response to Executive Order 12898, and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

We have assessed whether today's proposed rule may help mitigate, or result in disproportionate effects on minority or low-income populations. Due to budgeting and scheduling constraints, we have not compiled data correlating individual facility locations with minority/low income populations. However, our risk assessment did not identify risks from the management of dye, pigment, and FD&C production wastewaters in onsite tanks or surface impoundments at the generating facilities. In fact, based on this assessment, we are not proposing to list these wastewaters as hazardous waste. Therefore, we believe that any populations in proximity to these manufacturing facilities are not adversely affected by common waste management practices for these wastewaters. This proposed listing will reduce risks associated with managing the targeted nonwastewaters in nonhazardous Subtitle D landfills. This may reduce risks for any sensitive populations living in proximity to such facilities who rely on ground water for drinking water supplies.

This proposed rule is expected to provide incentives for reducing the use of hazardous constituents and may thereby reduce environmental risks associated with the facilities generating these wastes. Thus, the Agency believes that this rule may help mitigate health risks to minority and low income communities living near impacted facilities. Furthermore, we have no data indicating that today's proposal would result in disproportionately negative impacts on minority or low income communities.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not an economically significant regulatory action under Executive Order

⁷³ Executive Order 13084 is revoked by this Executive Order.