

prepared a Regulatory Flexibility Analysis in support of today's action. A summary of this analysis and findings is presented in section E below.

3. Environmental Justice

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," directs each Federal Agency to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations * * *"

The Executive Order requires that where environmental justice concerns or the potential for concerns are identified, appropriate analysis of the issue(s) be evaluated. To the extent practicable, the ecological, human health (taking into account subsistence patterns and sensitive populations) and socio-economic impacts of the proposed decision-document in minority and low-income communities should also be evaluated.

The Agency has examined Environmental Justice concerns relevant to today's action. A summary of this analysis and findings is presented in section F below.

4. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1766.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460 or by calling (202) 260-2740.

This information collection is required to provide documentation of solid waste exemptions from Subtitle C requirements, and will allow for certification and verification as the program evolves. Exemptions under today's action require no formal preapproval. As such, information collection, maintenance and reporting issues are especially important due to the self-implementing nature of this action. Successful implementation of today's proposal will depend upon the documentation, certification, and verification provided by the information collection.

The general authority for this proposal is sections 2002(a), 3001, 3002, 3004, and 3006 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6912(a), 6921, 6922, 6924, and 6926. The specific authority for the collection of information is 40 CFR 261.36, *Exemption for Listed Hazardous Wastes Containing Low Concentrations of Hazardous Constituents*.

The Agency has prepared a full Information Collection request (ICR) in support of today's action. A summary of the methodology and findings from this document is presented in section G below.

B. Background

In 1976, Congress passed the Resource Conservation and Recovery Act (RCRA) to address problems associated with annual nationwide generation of large quantities of municipal and industrial solid waste. This Act was significantly amended in 1984 by the Hazardous and Solid Waste Amendments (HSWA). Under RCRA, the Agency regulates non-hazardous solid waste through the Subtitle D program, and hazardous solid waste under the Subtitle C program. Subtitle C regulations differ from Subtitle D in two important areas. First, Subtitle C regulations are developed and promulgated by EPA, while Subtitle D requirements have been largely delegated to the states. Second, non-hazardous wastes regulated under Subtitle D are generally subject to standards that are considerably less stringent and less costly than those under Subtitle C. All wastes addressed under this action are currently managed under Subtitle C regulations.

RCRA is divided into four programs: Underground storage, medical waste, nonhazardous solid waste, and hazardous solid waste. Under RCRA 3001(a), Congress has required EPA to identify those wastes that should be classified as hazardous. In accordance with this provision, the Agency has designated wastes as hazardous in two ways: "characteristic," or "listed." Hazardous waste is considered characteristic if it has any of the properties or characteristics that would present a potential hazard if managed improperly. The Agency has identified four characteristics which, if exhibited, lead to hazardous classification. These are: Ignitability, corrosivity, reactivity, and toxicity. Under the toxicity characteristic, specific health-based concentration standards have been developed for approximately forty (40)

constituents. Wastes exhibiting any of these characteristics are subject to Subtitle C regulation. Hazardous wastes are identified as listed based on an extensive listing procedure. This procedure may identify a waste as hazardous under three broad categories: if it exhibits one of the characteristics identified above but has not been classified as characteristically hazardous, if it is determined to be acutely toxic or hazardous, or if the waste meets the statutory definition of a hazardous waste.

The Agency, however, was concerned that generators and managers of hazardous waste might avoid regulatory requirements in two major ways: (1) By mixing listed hazardous waste with non-hazardous solid waste, and, (2) by minimal processing and treatment of hazardous waste. These activities could result in a waste or residual material that was no longer legally defined as hazardous under Subtitle C. In many cases, the Agency believed these materials could continue to pose unacceptable hazards to human health and the environment. The Agency promulgated mixture and derived-from rules in May of 1980, in response to these potential loopholes.

C. Need for Regulation

The mixture and derived-from rules created what was perceived as being federal over-regulation, where listed hazardous waste continued to remain under Subtitle C jurisdiction regardless of constituent concentration or presence in the waste, either before or after treatment. This problem was exacerbated with the passage of HSWA in 1984. HSWA set Land Disposal Restrictions (LDR) requiring best demonstrated available technology (BDAT) treatment for all listed hazardous wastes prior to disposal. In cases where a specific listed wastestream contained relatively innocuous constituents, or very low concentrations, BDAT treatment requirements were felt to be overly protective, and unnecessarily expensive.

By requiring Subtitle C management for some low risk wastes, the current RCRA regulatory system may inhibit the efficient allocation of limited societal resources. From a social perspective, too many resources devoted to managing low risk wastes may reduce resource availability for managing higher risk wastes. Resource availability for general productivity investments and innovative technologies are also reduced. The Agency's delisting program has not provided an efficient solution to this problem. The delisting process has proven to be overly time