

industrial classification system for both regulatory and non-regulatory purposes. We believe that the regulated community's familiarity with the NAICS system and its implementation is an important justification for our proposing this approach. We also believe this is particularly the case for those industries that generate hazardous secondary materials. We request comment on whether the regulated community will be unfamiliar with the existing NAICS system, or its implementation, particularly for those industries that would most directly be affected (*i.e.*, those that generate hazardous secondary materials).

Finally, we are proposing to identify industry for purposes of today's rule at the Industry Group level, or the 4-digit NAICS level of classification. Two establishments will be considered within the "same industry" if they share the same 4-digit NAICS code. In arriving at this approach, we considered using the 3-digit, 4-digit, and 5-digit level (NAICS Sub-sector, Industry Group, and Industry, respectively). We selected the 4-digit level because we believe that this level struck the appropriate balance between being overly broad (*i.e.*, undermining any meaningful distinctions of industry) and too narrow. We think operations that are similar, but not identical, can generate and reclaim secondary materials without discarding them. Moreover, we think the narrower 5- and 6-digit NAICS classifications would potentially be more complicated (*i.e.*, more categories to consider), and this could be considerably more difficult to implement. In addition, narrower industry categories could unrealistically and inappropriately restrict beneficial resource recovery and recycling opportunities.

Specifically, we first looked at the overall distribution of industry classifications within the NAICS hierarchy, as shown in Table 1, focusing in particular on the Manufacturing Sectors (31–33). We would estimate that the Manufacturing Sector in general, and the Chemical Manufacturing Sub-sector in particular, have the potential to generate the widest array of listed hazardous secondary materials, based on the industries found in these sectors and the listing descriptions in 40 CFR part 261, Subpart D. Under the NAICS Manufacturing Sectors, there are 184 Industries (5-digit), 86 Industry Groups (4-digit), and 21 Sub-sectors (3-digit). While it is evident simply from the number of categories that industry classification under NAICS is broader at the 3-digit level compared with the 5-digit level, it is difficult to make any further conclusions as to the effect of

this broadening or narrowing without looking at specific examples.

Looking more closely within the Chemical Manufacturing Sub-sector, there are seven Industry Groups at the 4-digit level, and 17 Industries at the 5-digit level. According to the NAICS 2002 Manual, the seven Industry Groups within the Chemical Manufacturing Sub-sector were defined with a particular relationship in mind. That is,

The Chemical Manufacturing subsector is based on the transformation of organic and inorganic raw materials by a chemical process and the formulation of products. This subsector distinguishes the production of basic chemicals that comprise the *first industry group* from the production of intermediate and end products produced by further processing of basic chemicals that make up the *remaining industry groups*. (emphasis added).

In other words, the "first industry group" under the Chemical Manufacturing Sub-sector is NAICS 3251, Basic Chemical Manufacturing, which includes basic chemical industries such as Petrochemical and Industrial Gas manufacturing. Looking at the remaining 4-digit Industry Groups, this relationship is evident—away from the production of basic chemicals, towards the production of more refined chemical intermediates and end products. For example, the next several Industry Groups: 3252 (industries that manufacture Resin, Synthetic Rubber, and Artificial Synthetic Fibers and Filaments), 3253 (Pesticide, Fertilizer, and Other Agricultural Chemical Manufacturing), 3254 (Pharmaceutical and Medicine Manufacturing), and 3255 (Paint, Coating, and Adhesive Manufacturing) all represent the "further processing of basic chemicals."

We think that these distinctions made at the 4-digit level in the Chemical Manufacturing industry present a reasonable and logical categorization of the different parts of the Chemical Manufacturing industry. In our view, these distinctions are important, and should be preserved by using the 4-digit level in this proposed approach. In general, we found that the use of the 3-digit codes grouped together processes that are too dissimilar to be considered the same "industry" under a basic, "common sense" approach. Use of the 3-digit NAICS would have the effect of collapsing these distinct categories into the NAICS 325 Sub-sector. A 3-digit NAICS classification might, however, have certain advantages, such as possibly providing more opportunities for recycling, or fewer disputes over the classification of establishments (because it is a broader categorization).

Alternatively, use of the 5-digit level increases the number of industry categories within the NAICS 325 Sub-sector to 17. Within the Chemical Manufacturing Industry Groups, this results largely in a breakout of the industries that are described in the Industry Group title. For example, the 4-digit Industry Group "Paint, Coating, and Adhesive Manufacturing" splits into "Paint and Coating" and "Adhesive" manufacturing at the 5-digit level; or, "Resin, Synthetic Rubber, and Artificial Synthetic Fibers and Filaments" breaks out to "Resin and Synthetic Rubber" and "Artificial and Synthetic Fibers and Filaments" at the 5-digit level. Because we are using the NAICS principally because it is a widely recognized, familiar system that can be consistently applied, we do not necessarily see an advantage in further dividing (in the Chemical Manufacturing example) the 4-digit Industry Groups into 5-digit Industries. In fact, the more finely divided one makes the NAICS hierarchy, the more complex the overall approach can become. We believe that using 4-digit NAICS industry groups strikes the appropriate balance for this rule, given the options available using the NAICS hierarchy.

Therefore, we do not find that the possible advantages of a 3-digit approach outweigh the reasons articulated for proposing the 4-digit NAICS classification; nor do we see the advantage for using the 5-digit approach, and have identified possible disadvantages compared with the 4-digit approach. Although this review involved only the chemical industry hierarchy, we would point out that the chemical manufacturing industry is an important component of the universe of RCRA generators, and therefore how it is defined under today's proposal is important. (As will be discussed further below, two other important industry categories in terms of waste generation—petroleum and mineral processing—are being handled in a manner different from the NAICS approach described here, for reasons explained in the next section of this preamble.) Nevertheless, we request comment on whether or not the 4-digit NAICS classification is the most appropriate, given the goals we have articulated, or whether the 3-digit or 5-digit approach would be more appropriate, and why.

Finally, we note that there are a number of 4-digit NAICS industry codes that are designated as "Other" activities