

to be satisfied that there is no reason to believe the exported wastes and materials would not be managed in an "environmentally sound manner" (ESM) at the receiving facility in the importing country. For example, certain copper plating wastes are excluded from the RCRA definition of solid waste, even though they may exhibit the toxicity characteristic for lead, cadmium, chromium, or even cyanide. If the U.S. were to ratify the Basel Convention, these materials would be subject to the Basel Convention (assuming the importing country defined the materials as hazardous wastes), and the U.S. exporter would be required to comply with notification and consent procedures for the export of the materials. Additionally, if these materials were to be exported to smelters in countries with which we do not have existing Article 11 agreements, such as Chile or Peru, the export would be subject to additional requirements, including ESM determinations by EPA.

Imported Basel Convention hazardous and other wastes that meet domestic exclusions under the definition of solid waste would become subject to their exclusions upon entry into the legal jurisdiction of the United States; however, U.S. importers of such excluded materials may be required to comply with certain Basel Convention requirements if necessary for the U.S. to meet its Basel obligations and/or if the exporting Basel Party requires it. For example, the Basel Convention requires that, " \* \* \* each person who takes charge of a transboundary movement of hazardous wastes or other wastes, sign the movement document upon delivery or receipt of the wastes in question." (Basel Convention Article 6, paragraph 9). Thus, the U.S. importer, transporter(s) and receiving facility would be required to undertake this responsibility for the excluded material when it is imported into the United States.

### B. Superfund

A primary purpose of today's proposed rule is to encourage safe, beneficial recycling of hazardous secondary materials. In 1999, Congress enacted the Superfund Recycling Equity Act (SREA), explicitly defining those hazardous substance recycling activities that potentially may be exempted from liability under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). CERCLA section 9627. Today's proposed rule does not change the universe of recycling activities that could be exempted from CERCLA liability pursuant to CERCLA section 127.

Today's proposed rule only changes the regulatory definition of solid waste for purposes of implementing the RCRA Subtitle C regulatory requirements. The proposed rule also does not limit or otherwise affect EPA's ability to pursue potentially responsible persons under section 107 of CERCLA for releases or threatened releases of hazardous substances.

## VI. State Authority

### A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer the RCRA Subtitle C hazardous waste program within the state. Following authorization, EPA retains Subtitle C enforcement authority, although authorized states have primary enforcement responsibility. EPA retains (and does not delegate) authority under sections 3007, 3008(h), 3013 and 7003. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in that State, since only the State was authorized to issue RCRA permits. When new, more stringent Federal requirements were promulgated, the State was obligated to enact equivalent authorities within specified time frames. However, the new Federal requirements did not take effect in an authorized state until the State adopted the Federal requirements as state law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized States at the same time that they take effect in unauthorized states. EPA is directed by the statute to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA related provisions as State law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states do so.

Authorized states are required to modify their programs only when EPA enacts Federal requirements that are

more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the Federal program (*see also* 40 CFR 271.1). Therefore, authorized States may, but are not required to, adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous Federal regulations.

### B. Effect on State Authorization

Today's proposed rule is less stringent than the current federal program. Because states are not required to adopt less stringent regulations, they do not have to adopt the exclusions being proposed, although EPA encourages them to do so. If a state's standards for the materials discussed here are less stringent than those in today's proposed rule, the state will need to amend its regulations to make them equivalent to today's standards and pursue authorization.

### C. Interstate Transport

Because some states may choose not to seek authorization for today's proposed rulemaking, there will probably be cases where the materials in question will be transported through states with different regulations governing these wastes.

First, a waste which is subject to an exclusion from the definition of solid waste regulations may be sent to a state, or through a state, where it is subject to the full hazardous waste regulations. In this scenario, for the portion of the trip through the originating state, and any other states where the waste is excluded, neither a hazardous waste transporter with an EPA identification number per 40 CFR 263.11 nor a manifest would be required. However, for the portion of the trip through the receiving state, and any other states that do not consider the waste to be excluded, the transporter must have a manifest, and must move the waste in compliance with 40 CFR part 263. In order for the final transporter and the receiving facility to fulfill the requirements concerning the manifest (40 CFR 263.20, 263.21, 263.22, 264.71, 264.72, 264.76 or 265.71, 265.72, and 265.76), the initiating facility should complete a manifest and forward it to the first transporter to travel in a state where the waste is not excluded. The receiving facility must then sign the manifest and send a copy to the initiating facility. EPA recommends that the initiating facility note in block 15 of the manifest (Special Handling Instructions and Additional