

Information) each state where the wastes are not covered by an exclusion.

Second, a hazardous waste generated in a state which does not provide an exclusion for the waste may be sent to a state where it is excluded. In this scenario, the waste must be moved by a hazardous waste transporter while the waste is in the generator's state or any other states where it is not excluded. The initiating facility would complete a manifest and give copies to the transporter as required under 40 CFR 262.23(a). Transportation within the receiving state and any other states that exclude the waste would not require a manifest and need not be transported by a hazardous waste transporter. However, it is the initiating facility's responsibility to ensure that the manifest is forwarded to the receiving facility by any non-hazardous waste transporter and sent back to the initiating facility by the receiving facility (see 40 CFR 262.23 and 262.42).

Third, a waste may be transported across a state in which it is subject to the full hazardous waste regulations although other portions of the trip may be from, through, and to states in which it is excluded. Transport through the State must be conducted by a hazardous waste transporter and must be accompanied by a manifest. In order for the transporter to fulfill its requirements concerning the manifest (subpart B of part 263), the initiating facility must complete a manifest as required under the manifest procedures and forward it to the first transporter to travel in a state where the waste is not excluded. The transporter must deliver the manifest to, and obtain the signature of, either the next transporter or the receiving facility.

As more states streamline their regulatory requirements for these wastes, the complexity of interstate transport will be reduced.

## VII. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is "significant" and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the

economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the Agency has determined that today's proposed rule is a significant regulatory action because this proposed rule may have an annual effect on the economy of \$100 million or more. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the docket to today's proposal.

To estimate the cost savings, incremental costs, economic impacts and benefits from this rule to affected regulated entities, we completed an economic analyses for this rule. Copies of these analyses (entitled "Economic Assessment of the Association of Battery Recyclers Proposed Rule") have been placed in the RCRA docket for public review. The Agency solicits comment on the methodology and results from the analysis as well as any data that the public feels would be useful in a revised analysis.

#### 1. Methodology

To estimate the cost savings, incremental costs, economic impacts and benefits of this rule, the Agency estimated both the affected volume of hazardous secondary materials and affected entities. The Agency has evaluated a baseline (pre-regulatory) scenario based on prior management practice in the 1997 and 1999 Biennial Reporting System database. The Agency identified on-site recycling or recycling that occurred offsite between facilities with the same 4 digit SIC code.<sup>17</sup> Entities that reclaimed hazardous wastes in 1997 but abandoned (e.g., landfilled or incinerated) in 1999 are modeled to abandon their waste in the

<sup>17</sup> Note: The Standard Industrial Classification (SIC) system was the predecessor to the North American Industrial Classification System (NAICS) that the Agency is using to define industry today. Because only the SIC code as a data element was reported in the 1997 and 1999 BRS, EPA is using 4 digit SIC codes as a proxy for the 4 digit NAICS code with the exception of the definitions of petroleum and mineral processing which remain as previously described and are discussed above in this proposal.

1999 baseline and reclaim post-rule. Entities that reclaim in the 1999 baseline are modeled to continue reclaiming at lower costs. EPA has also evaluated regulated entities that recycled their waste off-site at facilities outside of their industry, generally commercially established hazardous waste treatment facilities. Finally, the Agency has evaluated entities that have land disposed of wastes that may be technically and economically recyclable under today's proposal.

EPA has estimated incremental costs and costs savings for affected entities through comparing hazardous waste management costs in the 1999 baseline (whether recycled or abandoned) with the cost of reclaiming these secondary materials as excluded from RCRA jurisdiction. To do this, the Agency examined two options as previously described above as Co-Proposal Option # 1 and Co-Proposal Option # 2. Option 1 provides that hazardous secondary materials that are recycled within the same generating industry are not solid wastes under RCRA irrespective of whether the recycling facility also receives wastes from other industries. By contrast, Option 2 limits the scope of the exclusion to facilities that solely recycle hazardous secondary materials from within the same generating industry and do not receive waste from other industries.

The benefits from today's proposed rulemaking are presented qualitatively. EPA solicits comment on the need and means to evaluate more quantitative benefits from today's rule.

#### 2. Results

##### a. Volume

The estimated volume of secondary materials affected by this rulemaking for Option 1 are 1570 thousand tons. Of this total 1506 thousand tons of material are recycled onsite and 64 thousand tons of material recycled offsite. This volume of material is generated by 1749 affected plants. For Option 2 the estimated volume is 1534 thousand tons. Because it is possible for the affected volume of hazardous waste to be either higher or lower than the estimated volume, EPA notes that the estimated cost savings and impacts to affected entities could be greater or smaller as well. The Agency solicits comment on how it should adjust its methodology to account for this uncertainty and whether it would be more appropriate to use a range than this value.

##### b. Cost/Economic Impact

For Option 1, EPA has estimated the average annual cost savings from this