

and a high-capacity scenario reflecting existing and planned capacity.

This rule is projected to result in a benefit to society in the form of net cost savings to the private sector, on a nationwide basis, thereby allowing for the more efficient use of limited resources elsewhere in the market. For more detail regarding the data sources, key assumptions, and any limitations associated with the analyses of the economic impacts, the reader is referred to the economic assessment document completed for this rule, which can be found in the docket to this rulemaking.

As described in the methodology overview in EPA's economic assessment document, we estimated the impacts of the final rule under two gasification capacity scenarios: (1) A low-capacity scenario that reflects the capacity of the three petroleum refinery gasification systems that are known to be operating; and (2) a high-capacity scenario that reflects the capacity of these three systems plus two additional units that were planned as of 2003, but have not yet gone online. Results for both of these scenarios are presented as a range of the potential net social benefits of the rule, in order to help account for the uncertainty regarding the future operational status of planned units not yet in operation.³³

The central conclusion of our analysis states that approximately 324,300 tons of oil-bearing hazardous secondary materials generated by 152 refineries would qualify for the exclusion each year. Of this quantity, petroleum refineries currently send approximately 205,500 tons offsite for disposal or recycling; the remaining 118,800 tons are processed onsite. Of the 324,300 tons of oil-bearing hazardous secondary materials qualifying for the exclusion, between 123,300 and 177,000 tons are likely to be excluded by petroleum refineries each year. This represents approximately 38 percent to 55 percent of the material eligible for the exclusion.

We estimate that the rule will yield between \$46.4 million and \$48.7 million in net social benefits per year. Avoided waste management costs make up the most significant share of the benefits of the rule, followed by feedstock savings for gasification systems. Commercial waste management facilities that manage oil-bearing hazardous secondary materials in the baseline may experience annual revenue losses of \$10.8 million to \$15.1 million under the final rule. Based on the limited data available on the

revenues of these facilities, this loss represents a small fraction of their revenues. The impact of the final rule depends significantly on the cost of incineration. The impacts reflect the average cost of incinerating bulk sludge, as reported by the Environmental Technology Council (ETC). If we use the low end of ETC's cost range, the net social benefits of the rule decline to \$5.2 million to \$25.5 million per year.³⁴

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." It has been determined that this rule is a "significant regulatory action" because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this rule to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. As indicated above, the annual cost savings of the rule are estimated to be \$46.4 million to \$48.7 million. This analysis is contained in the document "Assessment of the Potential Costs, Benefits, and Other Impacts of the Exclusion for Gasification of Petroleum Oil-Bearing Secondary Materials—Final Rule." A copy of the analysis is available in the docket for this regulation.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* EPA is amending an existing exclusion from the definition of solid waste that applies to hazardous secondary materials generated at a petroleum refinery when these materials are inserted back into the petroleum refining process (see current exclusion found at 40 CFR 261.4(a)(12)(i)). With today's final rule, the conditional exclusion will be revised to add "gasification" to the list of identified petroleum refinery processes into which hazardous secondary materials can be legitimately recycled. Materials excluded under 40

CFR 261.4(a)(12)(i) are not solid wastes for purposes of Subtitle C regulation, and therefore are not (by definition) hazardous wastes from the point of generation. Therefore, requirements that normally apply to the management of hazardous wastes, such as notification or the use of a hazardous waste manifest, do not apply to these materials, provided the conditions of the exclusion are satisfied.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, or any other statute. This analysis must be completed unless the agency is able to certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entities are defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently

³³ The IGCC unit located at the El Dorado, Kansas Refinery was used as part of this analysis. However, as of 2006, this unit is no longer in operation.

³⁴ ETC, Incinerator and Landfill Cost Data, <http://www.etc.org/costsuevey8.cfm>, accessed September 8, 2006.