

HAZARDOUS WASTE ELECTRONIC MANIFEST
 ESTABLISHMENT ACT

SEPTEMBER 10, 2012.—Committed to the Committee of the Whole House on the
 State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce,
 submitted the following

R E P O R T

[To accompany S. 710]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (S. 710) to amend the Solid Waste Disposal Act to direct the Administrator of the Environmental Protection Agency to establish a hazardous waste electronic manifest system, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
 Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Hazardous Waste Electronic Manifest Establishment Act”.

SEC. 2. HAZARDOUS WASTE ELECTRONIC MANIFEST SYSTEM.

(a) IN GENERAL.—Subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) is amended by adding at the end the following:

“SEC. 3024. HAZARDOUS WASTE ELECTRONIC MANIFEST SYSTEM.

“(a) DEFINITIONS.—In this section:

“(1) BOARD.—The term ‘Board’ means the Hazardous Waste Electronic Manifest System Advisory Board established under subsection (f).

“(2) FUND.—The term ‘Fund’ means the Hazardous Waste Electronic Manifest System Fund established by subsection (d).

“(3) PERSON.—The term ‘person’ includes an individual, corporation (including a Government corporation), company, association, firm, partnership, society, joint stock company, trust, municipality, commission, Federal agency, State, political subdivision of a State, or interstate body.

“(4) SYSTEM.—The term ‘system’ means the hazardous waste electronic manifest system established under subsection (b).

“(5) USER.—The term ‘user’ means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that—

“(A) is required to use a manifest to comply with any Federal or State requirement to track the shipment, transportation, and receipt of hazardous waste or other material that is shipped from the site of generation to an off-site facility for treatment, storage, disposal, or recycling; and

“(B)(i) elects to use the system to complete and transmit an electronic manifest format; or

“(ii) submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with such regulations as the Administrator may promulgate to require such a submission.

“(b) ESTABLISHMENT.—Not later than 3 years after the date of enactment of this section, the Administrator shall establish a hazardous waste electronic manifest system that may be used by any user.

“(c) USER FEES.—

“(1) IN GENERAL.—In accordance with paragraph (4), the Administrator may impose on users such reasonable service fees as the Administrator determines to be necessary to pay costs incurred in developing, operating, maintaining, and upgrading the system, including any costs incurred in collecting and processing data from any paper manifest submitted to the system after the date on which the system enters operation.

“(2) COLLECTION OF FEES.—The Administrator shall—

“(A) collect the fees described in paragraph (1) from the users in advance of, or as reimbursement for, the provision by the Administrator of system-related services; and

“(B) deposit the fees in the Fund.

“(3) FEE STRUCTURE.—

“(A) IN GENERAL.—The Administrator, in consultation with information technology vendors, shall determine through the contract award process described in subsection (e) the fee structure that is necessary to recover the full cost to the Administrator of providing system-related services, including—

“(i) contractor costs relating to—

“(I) materials and supplies;

“(II) contracting and consulting;

“(III) overhead;

“(IV) information technology (including costs of hardware, software, and related services);

“(V) information management;

“(VI) collection of service fees;

“(VII) reporting and accounting; and

“(VIII) project management; and

“(ii) costs of employment of direct and indirect Government personnel dedicated to establishing, managing, and maintaining the system.

“(B) ADJUSTMENTS IN FEE AMOUNT.—

“(i) IN GENERAL.—The Administrator, in consultation with the Board, shall increase or decrease the amount of a service fee determined under the fee structure described in subparagraph (A) to a level that will—

“(I) result in the collection of an aggregate amount for deposit in the Fund that is sufficient and not more than reasonably necessary to cover current and projected system-related costs (including any necessary system upgrades); and

“(II) minimize, to the maximum extent practicable, the accumulation of unused amounts in the Fund.

“(ii) EXCEPTION FOR INITIAL PERIOD OF OPERATION.—The requirement described in clause (i)(II) shall not apply to any additional fees that accumulate in the Fund, in an amount that does not exceed \$2,000,000, during the 3-year period beginning on the date on which the system enters operation.

“(iii) TIMING OF ADJUSTMENTS.—Adjustments to service fees described in clause (i) shall be made—

“(I) initially, at the time at which initial development costs of the system have been recovered by the Administrator such that the service fee may be reduced to reflect the elimination of the system development component of the fee; and

“(II) periodically thereafter, upon receipt and acceptance of the findings of any annual accounting or auditing report under subsection (d)(3), if the report discloses a significant disparity for a fiscal year between the funds collected from service fees under this subsection for the fiscal year and expenditures made for the fiscal year to provide system-related services.

“(4) CREDITING AND AVAILABILITY OF FEES.—Fees authorized under this section shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts.

“(d) HAZARDOUS WASTE ELECTRONIC MANIFEST SYSTEM FUND.—

“(1) ESTABLISHMENT.—There is established in the Treasury of the United States a revolving fund, to be known as the ‘Hazardous Waste Electronic Manifest System Fund’, consisting of such amounts as are deposited in the Fund under subsection (c)(2)(B).

“(2) EXPENDITURES FROM FUND.—

“(A) IN GENERAL.—Only to the extent provided in advance in appropriations Acts, on request by the Administrator, the Secretary of the Treasury shall transfer from the Fund to the Administrator amounts appropriated to pay costs incurred in developing, operating, maintaining, and upgrading the system under subsection (c).

“(B) USE OF FUNDS BY ADMINISTRATOR.—Fees collected by the Administrator and deposited in the Fund under this section shall be available to the Administrator subject to appropriations Acts for use in accordance with this section without fiscal year limitation.

“(C) OVERSIGHT OF FUNDS.—The Administrator shall carry out all necessary measures to ensure that amounts in the Fund are used only to carry out the goals of establishing, operating, maintaining, upgrading, managing, supporting, and overseeing the system.

“(3) ACCOUNTING AND AUDITING.—

“(A) ACCOUNTING.—For each 2-fiscal-year period, the Administrator shall prepare and submit to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives a report that includes—

“(i) an accounting of the fees paid to the Administrator under subsection (c) and disbursed from the Fund for the period covered by the report, as reflected by financial statements provided in accordance with—

“(I) the Chief Financial Officers Act of 1990 (Public Law 101–576; 104 Stat. 2838) and amendments made by that Act; and

“(II) the Government Management Reform Act of 1994 (Public Law 103–356; 108 Stat. 3410) and amendments made by that Act; and

“(ii) an accounting describing actual expenditures from the Fund for the period covered by the report for costs described in subsection (c)(1).

“(B) AUDITING.—

“(i) IN GENERAL.—For the purpose of section 3515(c) of title 31, United States Code, the Fund shall be considered a component of an Executive agency.

“(ii) COMPONENTS OF AUDIT.—The annual audit required in accordance with sections 3515(b) and 3521 of title 31, United States Code, of

the financial statements of activities carried out using amounts from the Fund shall include an analysis of—

- “(I) the fees collected and disbursed under this section;
 - “(II) the reasonableness of the fee structure in place as of the date of the audit to meet current and projected costs of the system;
 - “(III) the level of use of the system by users; and
 - “(IV) the success to date of the system in operating on a self-sustaining basis and improving the efficiency of tracking waste shipments and transmitting waste shipment data.
- “(iii) FEDERAL RESPONSIBILITY.—The Inspector General of the Environmental Protection Agency shall—
- “(I) conduct the annual audit described in clause (ii); and
 - “(II) submit to the Administrator a report that describes the findings and recommendations of the Inspector General resulting from the audit.

“(e) CONTRACTS.—

“(1) AUTHORITY TO ENTER INTO CONTRACTS FUNDED BY SERVICE FEES.—The Administrator may enter into 1 or more information technology contracts with entities determined to be appropriate by the Administrator (referred to in this subsection as ‘contractors’) for the provision of system-related services.

“(2) TERM OF CONTRACT.—A contract awarded under this subsection shall have a term of not more than 10 years.

“(3) ACHIEVEMENT OF GOALS.—The Administrator shall ensure, to the maximum extent practicable, that a contract awarded under this subsection—

- “(A) is performance-based;
- “(B) identifies objective outcomes; and
- “(C) contains performance standards that may be used to measure achievement and goals to evaluate the success of a contractor in performing under the contract and the right of the contractor to payment for services under the contract, taking into consideration that a primary measure of successful performance shall be the development of a hazardous waste electronic manifest system that—

“(i) meets the needs of the user community (including States that rely on data contained in manifests);

“(ii) attracts sufficient user participation and service fee revenues to ensure the viability of the system;

“(iii) decreases the administrative burden on the user community; and

“(iv) provides the waste receipt data applicable to the biennial reports required by section 3002(a)(6).

“(4) PAYMENT STRUCTURE.—Each contract awarded under this subsection shall include a provision that specifies—

“(A) the service fee structure of the contractor that will form the basis for payments to the contractor; and

“(B) the fixed-share ratio of monthly service fee revenues from which the Administrator shall reimburse the contractor for system-related development, operation, and maintenance costs.

“(5) CANCELLATION AND TERMINATION.—

“(A) IN GENERAL.—If the Administrator determines that sufficient funds are not made available for the continuation in a subsequent fiscal year of a contract entered into under this subsection, the Administrator may cancel or terminate the contract.

“(B) NEGOTIATION OF AMOUNTS.—The amount payable in the event of cancellation or termination of a contract entered into under this subsection shall be negotiated with the contractor at the time at which the contract is awarded.

“(6) NO EFFECT ON OWNERSHIP.—Regardless of whether the Administrator enters into a contract under this subsection, the system shall be owned by the Federal Government.

“(f) HAZARDOUS WASTE ELECTRONIC MANIFEST SYSTEM ADVISORY BOARD.—

“(1) ESTABLISHMENT.—Not later than 3 years after the date of enactment of this section, the Administrator shall establish a board to be known as the ‘Hazardous Waste Electronic Manifest System Advisory Board’.

“(2) COMPOSITION.—The Board shall be composed of 9 members, of which—

“(A) 1 member shall be the Administrator (or a designee), who shall serve as Chairperson of the Board; and

“(B) 8 members shall be individuals appointed by the Administrator—

“(i) at least 2 of whom shall have expertise in information technology;

“(ii) at least 3 of whom shall have experience in using or represent users of the manifest system to track the transportation of hazardous waste under this subtitle (or an equivalent State program); and

“(iii) at least 3 of whom shall be a State representative responsible for processing those manifests.

“(3) DUTIES.—The Board shall meet annually to discuss, evaluate the effectiveness of, and provide recommendations to the Administrator relating to, the system.

“(g) REGULATIONS.—

“(1) PROMULGATION.—

“(A) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator shall promulgate regulations to carry out this section.

“(B) INCLUSIONS.—The regulations promulgated pursuant to subparagraph (A) may include such requirements as the Administrator determines to be necessary to facilitate the transition from the use of paper manifests to the use of electronic manifests, or to accommodate the processing of data from paper manifests in the electronic manifest system, including a requirement that users of paper manifests submit to the system copies of the paper manifests for data processing purposes.

“(C) REQUIREMENTS.—The regulations promulgated pursuant to subparagraph (A) shall ensure that each electronic manifest provides, to the same extent as paper manifests under applicable Federal and State law, for—

“(i) the ability to track and maintain legal accountability of—

“(I) the person that certifies that the information provided in the manifest is accurately described; and

“(II) the person that acknowledges receipt of the manifest;

“(ii) if the manifest is electronically submitted, State authority to access paper printout copies of the manifest from the system; and

“(iii) access to all publicly available information contained in the manifest.

“(2) EFFECTIVE DATE OF REGULATIONS.—Any regulation promulgated by the Administrator under paragraph (1) and in accordance with section 3003 relating to electronic manifesting of hazardous waste shall take effect in each State as of the effective date specified in the regulation.

“(3) ADMINISTRATION.—The Administrator shall carry out regulations promulgated under this subsection in each State unless the State program is fully authorized to carry out such regulations in lieu of the Administrator.

“(h) REQUIREMENT OF COMPLIANCE WITH RESPECT TO CERTAIN STATES.—In any case in which the State in which waste is generated, or the State in which waste will be transported to a designated facility, requires that the waste be tracked through a hazardous waste manifest, the designated facility that receives the waste shall, regardless of the State in which the facility is located—

“(1) complete the facility portion of the applicable manifest;

“(2) sign and date the facility certification; and

“(3) submit to the system a final copy of the manifest for data processing purposes.

“(i) AUTHORIZATION FOR START-UP ACTIVITIES.—There are authorized to be appropriated \$2,000,000 for each of fiscal years 2013 through 2015 for start-up activities to carry out this section, to be offset by collection of user fees under subsection (c) such that all such appropriated funds are offset by fees as provided in subsection (c).”

(b) CONFORMING AMENDMENT.—The table of contents of the Solid Waste Disposal Act (42 U.S.C. 6901) is amended by inserting at the end of the items relating to subtitle C the following:

“Sec. 3024. Hazardous waste electronic manifest system.”

PURPOSE AND SUMMARY

This legislation amends Subtitle C of the Solid Waste Disposal Act, otherwise known as the Resource Conservation and Recovery Act (RCRA), to direct the Administrator of the Environmental Protection Agency (EPA) to establish a hazardous waste electronic manifest system (system). The legislation requires EPA to create, through the use of one or more performance-based and goal-oriented contracts with outside vendors, a system that may be used at the option of any entity required to complete or file a hazardous

waste manifest. S. 710 also authorizes EPA to establish and collect fees paid by users of the system, and deposit those fees into a fund solely to pay the costs of the system. The bill also requires EPA to create a Hazardous Waste Electronic Manifest System Governing Board to evaluate the manifest system and to periodically report on the financial status of the fund to Congress. In addition, the bill requires EPA's Inspector General to perform an annual audit of the system, including an evaluation of the reasonableness of the fees.

The amendment adopted by the Committee allows the fees to be collected and obligated, in accordance with appropriations acts and only for use on the system. It also authorizes start-up activities to be funded in advance of collection of fees, such that all program costs are offset by fee collection. By contrast, S. 710, as passed by the Senate, provides for mandatory spending and fee collection not subject to appropriations acts. Finally, the amendment deletes certain contract details specified in S. 710 as approved by the Senate.

BACKGROUND AND NEED FOR LEGISLATION

Subtitle C of RCRA establishes a Federal program to regulate hazardous waste management and disposal. Section 3002 of RCRA requires use of a manifest system to assure that hazardous waste generated is designated for treatment, storage, or disposal in, and arrives at, treatment, storage, or disposal facilities. Since 1980, EPA has required use of the Hazardous Waste Manifest System (HWMS), a set of multi-copy paper forms, reports, and procedures designed to track hazardous waste from the time it leaves the facility where it was generated until it reaches the off-site waste management facility that will store, treat, or dispose of it.

In order to verify that waste has been properly delivered, and that no waste is lost or unaccounted for in the process, paper copies of the manifest must accompany the waste as it is transported. Once the waste reaches its destination, the receiving facility must mail a signed paper copy of the manifest to the generator to be kept on file confirming that the waste has been received by the designated facility.¹ Some States have additional submission mandates.

EPA requires that the manifest contain information on the type and quantity of the waste being transported, instructions for handling the waste, and signatures for all parties involved in the disposal process, from original generator to final disposer.

In the event of an emergency or release of hazardous waste the manifest can provide response personnel with a variety of useful information, including data on the hazardous waste's potential to threaten human health and the environment.

Notwithstanding the 2006 changes, EPA has stated that the paper hazardous waste manifest burden constitutes the most expensive paperwork requirement EPA imposes under Subtitle C of the RCRA. The EPA estimates that the cost of the paperwork burden on States and private entities from manifests to be from \$193 million to over \$400 million annually.

Besides eliminating most of the manual processing steps involved with the paper-driven system, EPA also believes an electronic system will produce better quality data, provide nearly real-time

¹ <http://www.epa.gov/wastes/hazard/transportation/manifest/index.htm>.

tracking, serve as a single point of contact for both Federal and State required manifest data reporting, and reduce the need for on-site labor intensive inspection of paper records.²

HEARINGS

On June 21, 2012, the Subcommittee on Environment and the Economy held a hearing entitled “Electronic Submissions of Hazardous Waste Manifests—Modernizing for the 21st Century.” The Subcommittee received testimony from Suzanne Rudzinski, Director, Office of Resource Conservation and Recovery, Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency; Lisa Silvia, Senior Waste Inspector, Virginia Department of Environmental Quality, on behalf of the Association of State and Territorial Solid Waste Management Officials; and David Case, Executive Director, Environmental Technology Council. Witnesses discussed S. 710 and EPA detailed the new statutory authority it would need to establish an electronic system.

COMMITTEE CONSIDERATION

S. 710 was referred to the Committee on Energy and Commerce, and Representative John Shimkus, Chairman of the Subcommittee on Environment and the Economy, distributed an amendment in the nature of a substitute to S. 710 on July 24, 2012.

On July 26, 2012, the Subcommittee on Environment and the Economy met in open markup session to consider S. 710. Only one amendment, Representative Shimkus’ amendment in the nature of a substitute, was offered, and it was adopted by a voice vote. The Subcommittee on Environment and the Economy ordered S. 710 favorably reported, as amended, to the full Committee by a voice vote.

On July 31, 2012, the Committee on Energy and Commerce met in open markup session to consider S. 710, as amended by the Subcommittee on Environment and the Economy. No amendments were offered to S. 710, and the Committee ordered S. 710 favorably reported to the House, as amended.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, S. 710 was reported by voice vote with a majority quorum present. There was no request for a recorded vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

S. 710, the “Hazardous Waste Electronic Manifest Establishment Act,” facilitates creation of a system for electronic submission and tracking of hazardous waste manifests pursuant to Subtitle C of

²EPA testimony before Subcommittee on Environment and the Economy, June 21, 2012.

RCRA. The legislation requires EPA to create, through the use of one or more performance-based and goal-oriented contracts with outside vendors, a system that may be used by any entity required to complete or file a manifest. Subject to appropriations, S. 710 authorizes EPA to establish and collect a user fee to pay for building, operating, upgrading, and maintaining the system. S. 710 also requires EPA to create a Hazardous Waste Electronic Manifest System Board to evaluate the manifest system; periodically report on the financial status of the fund to Congress; and have EPA's Inspector General provide an accounting of the actual expenditures from the fund.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX
EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that S. 710, the "Hazardous Waste Electronic Manifest Establishment Act," as amended by the Committee on Energy and Commerce, would result in no new or increased budget authority, no entitlement authority, and no tax expenditures. Revenues collected from system users would fully offset new budget authority.

EARMARKS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives, the Committee finds that S. 710, the "Hazardous Waste Electronic Manifest Establishment Act," as amended by the Committee on Energy and Commerce, contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

AUGUST 21, 2012.

Hon. FRED UPTON,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 710, the Hazardous Waste Electronic Manifest Establishment Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 710—Hazardous Waste Electronic Manifest Establishment Act

Summary: S. 710 would direct the Environmental Protection Agency (EPA) to establish an electronic manifest system to track the handling of hazardous waste. This legislation would authorize the appropriation of \$6 million over the 2013–2015 period for EPA to establish the system. In addition, subject to provisions in future

appropriations acts, this legislation would authorize EPA to collect user fees to offset the cost of developing, operating, and maintaining the system.

Under current law, individuals who handle hazardous waste must prepare a paper manifest that completely documents how hazardous waste is disposed of from the time it is generated through treatment, storage, and disposal. Under S. 710, generators and transporters of hazardous waste and the owners and operators of facilities that treat, store, or dispose of hazardous waste could elect to use the proposed electronic manifest system or the existing paper system.

Subject to appropriation of the necessary amounts, CBO estimates that over the 2013–2017 period, EPA would spend about \$15 million to create the electronic manifest system. We also estimate that EPA would collect user fees totaling \$12 million over that same period. Thus, CBO estimates that implementing this legislation would have a net cost of \$3 million over the 2013–2017 period. Pay-as-you-go procedures do not apply to S. 710 because the legislation would not affect direct spending or revenues.

S. 710 would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on facilities that handle hazardous waste. CBO estimates that the cost of the mandates would fall below the annual thresholds established in UMRA (\$73 million for intergovernmental mandates and \$146 million for private-sector mandates in 2012, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 710 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2013	2014	2015	2016	2017	2013–2017
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Gross Spending:						
Estimated Authorization Level	3	3	3	3	3	15
Estimated Outlays	3	3	3	3	3	15
Fees:						
Estimated Authorization Level	0	0	0	–6	–6	–12
Estimated Outlays	0	0	0	–6	–6	–12
Net Spending:						
Estimated Authorization Level	3	3	3	–3	–3	3
Estimated Outlays	3	3	3	–3	–3	3

Basis of estimate: For this estimate, CBO assumes that S. 710 will be enacted near the beginning of fiscal year 2013, that the necessary amounts to implement this legislation will be appropriated for each year, and the authority to collect fees will be provided.

Gross spending

S. 710 would authorize the appropriation of \$6 million over the 2013–2015 period for EPA to establish an electronic manifest system to track the handling of hazardous waste. That amount would cover contract costs to develop the manifest system. Based on information from EPA, CBO estimates that EPA would require additional appropriations of \$3 million over the 2013–2015 period to

oversee the system's development. EPA's administrative expenses include outreach; regulatory development; system and security planning, procurement, and project management. After 2015, we estimate that EPA would spend about \$3 million annually to operate and maintain the system. Thus, CBO estimates that implementing this legislation would have a gross cost of \$15 million over the 2013–2017 period, assuming appropriation of the specified and estimated amounts.

Fees

Under S. 710, EPA would be authorized, subject to provisions in future appropriations acts, to collect fees to offset the cost of establishing, operating, and maintaining the new system. Based on information from EPA, CBO expects that the agency would not collect fees before the new system is in use, beginning in 2016. CBO estimates that EPA would collect \$6 million in each of 2016, 2017, and 2018 to recover its operating costs in those years and the initial amounts spent to develop the system over the 2012–2015 period. We expect that the agency would reduce fees once the system development costs were recouped.

Based on information from EPA, CBO estimates that about 114,000 users would obtain electronic manifests in 2016, with participation reaching 227,000 users in subsequent years. We estimate that, under this legislation, EPA would collect annual fees from those participants totaling \$12 million over the 2013–2017 period. After 2018, CBO estimates that fees would be reduced to match the annual operating and maintenance costs associated with the tracking system.

Intergovernmental and private-sector impact: S. 710 contains intergovernmental and private-sector mandates, as defined in UMRA, on facilities that handle hazardous waste. CBO estimates that the cost of the mandates would fall below the annual thresholds established in UMRA (\$73 million for intergovernmental mandates and \$146 million for private-sector mandates in 2012, adjusted annually for inflation).

Mandates

The act would require waste management facilities that receive hazardous waste generated in or shipped through other states to submit copies of shipment manifests to EPA. The act also would authorize EPA to require those facilities and any hazardous waste management facilities that use a paper system to submit a copy of the manifest to the electronic system established under the act. The affected facilities would primarily be private entities but could include municipal and county landfills. Because the cost to complete a manifest and to submit a paper copy to the electronic system would be minimal, CBO estimates that the cost to comply with the mandates would be small.

The act also would authorize EPA to establish fees for users of the electronic manifest system, which could include those facilities that are required to submit a copy of a paper manifest. CBO estimates that such fees would total \$6 million or less annually beginning in fiscal year 2016.

Other Impacts

CBO expects that users of the electronic manifest system created by the act could save money in comparison to using a paper system. Users include generators, transporters, and recipients of hazardous waste, as well as state agencies that collect copies of manifests.

Previous CBO cost estimate: On May 6, 2011, CBO transmitted a cost estimate for S. 710, the Hazardous Waste Electronic Manifest Establishment Act, as ordered reported by the Senate Committee on Environment and Public Works on April 15, 2011. Both versions of S. 710 would require that EPA establish an electronic manifest system to track hazardous waste, but the funding mechanisms for the systems provided in each are different. The two CBO cost estimates reflect those differences.

Estimate prepared by: Federal costs: Susanne S. Mehlman; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

S. 710, the “Hazardous Waste Electronic Manifest Establishment Act,” as amended by the Committee on Energy and Commerce, creates one advisory committee, which is within the meaning and requirements of section 5(b) of the Federal Advisory Committee Act.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF LEGISLATION

S. 710, as amended, adds a new section 3024 to Subtitle C of the Solid Waste Disposal Act. New section 3024 contains nine subsections, as follows:

Subsection (a) defines “Board,” “Fund,” “System,” “Person,” and “User,” each as used in new Section 3024.

Subsection (b) requires that, not later than three years after enactment, the EPA Administrator establish a system that may be used by any user.

Subsection (c) authorizes the Administrator, in accordance with appropriations acts, to impose reasonable service fees necessary to pay costs incurred in developing, operating, maintaining, and upgrading the system. Subparagraph (c)(3)(B) requires the Administrator, in consultation with the Board established in Subsection (f), to increase or decrease the amount of the service fee to a level sufficient and not more than reasonably necessary to cover current

and projected system-related costs, and to minimize accumulation of unused amounts in the Fund. The Committee amendment added the requirement that fees be adjusted to ensure that they are “not more than reasonably necessary” to cover system costs to ensure that users are not overcharged for the system if appropriations acts appropriate more than needed to make the system function effectively. The Committee expects that appropriations acts that follow such a fee adjustment will take into account the reasons for and the amount of the adjustment. The Committee also added to subsection (c) a new paragraph (4) on “Crediting and Availability of Fees.” Paragraph (4) provides that fees authorized under new section 3024 are to be collected and available for obligation only to the extent and in the amount provided in advance in appropriations acts.

Subsection (d) establishes in the U.S. Treasury a fund consisting of amounts deposited in the fund under subsection (c) to be used solely to carry out the purposes of the system. Subsection (d) also requires the EPA Inspector General to conduct an audit of fees paid and disbursed, including the reasonableness of the fee structure to meet system costs, the level of use, and the operating success of the system. Subsection (d) also requires the Administrator to report to Congress, for each 2-fiscal-year period, an accounting of fees paid and disbursed.

Subsection (e) authorizes the Administrator to enter into contracts for system-related services that have terms of not more than 10 years, are performance based, identify objective outcomes, contain performance standards, and specify the service fee structure that forms the basis of payments to the contractor. The Committee amendment deletes an explicit contract condition that appeared in subparagraph (e)(1)(b) as originally approved by the Senate, which provided that the contractor would assume the initial risk of the information technology investment. Instead, the Committee leaves new section 3024 silent on this subject in order to ensure that contracting parties have flexibility to adopt whatever combination of contract terms affords effective and economic system design, development, and performance. The Committee expects the Administrator will not secure contracts at costs that exceed the fair market value of the procured goods and services.

Subsection (f) establishes a hazardous waste electronic manifest system advisory board to evaluate the effectiveness of, and provide recommendations to the Administrator relating to, the system.

Subsection (g) requires the Administrator, not later than one year after enactment, to promulgate regulations to carry out new Solid Waste Disposal Act section 3024.

Subsection (h) requires that facilities that receive hazardous waste submit a manifest if a State in which the waste was generated, or in which the waste is transported, requires tracking with a manifest.

Subsection (i) authorizes \$2 million to be appropriated for each of fiscal years 2013–2015 for start-up activities to carry out new section 3024. The start-up appropriations are required to be offset by the collection of user fees so that all appropriated funds are offset by fees as provided in subsection (c).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SOLID WASTE DISPOSAL ACT

TITLE II—SOLID WASTE DISPOSAL

Subtitle A—General Provisions

SHORT TITLE AND TABLE OF CONTENTS

SEC. 1001. This title (hereinafter in this title referred to as “this Act”), together with the following table of contents, may be cited as the “Solid Waste Disposal Act”:

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SUBTITLE C—HAZARDOUS WASTE MANAGEMENT

Sec. 3001. Identification and listing of hazardous waste.

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Sec. 3024. *Hazardous waste electronic manifest system.*

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Subtitle C—Hazardous Waste Management

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SEC. 3024. HAZARDOUS WASTE ELECTRONIC MANIFEST SYSTEM.

(a) **DEFINITIONS.**—*In this section:*

(1) **BOARD.**—*The term “Board” means the Hazardous Waste Electronic Manifest System Advisory Board established under subsection (f).*

(2) **FUND.**—*The term “Fund” means the Hazardous Waste Electronic Manifest System Fund established by subsection (d).*

(3) **PERSON.**—*The term “person” includes an individual, corporation (including a Government corporation), company, association, firm, partnership, society, joint stock company, trust, municipality, commission, Federal agency, State, political subdivision of a State, or interstate body.*

(4) **SYSTEM.**—*The term “system” means the hazardous waste electronic manifest system established under subsection (b).*

(5) **USER.**—*The term “user” means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that—*

(A) is required to use a manifest to comply with any Federal or State requirement to track the shipment, transportation, and receipt of hazardous waste or other material that is shipped from the site of generation to an off-site facility for treatment, storage, disposal, or recycling; and

(B)(i) elects to use the system to complete and transmit an electronic manifest format; or

(ii) submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with such regulations as the Administrator may promulgate to require such a submission.

(b) *ESTABLISHMENT.*—Not later than 3 years after the date of enactment of this section, the Administrator shall establish a hazardous waste electronic manifest system that may be used by any user.

(c) *USER FEES.*—

(1) *IN GENERAL.*—In accordance with paragraph (4), the Administrator may impose on users such reasonable service fees as the Administrator determines to be necessary to pay costs incurred in developing, operating, maintaining, and upgrading the system, including any costs incurred in collecting and processing data from any paper manifest submitted to the system after the date on which the system enters operation.

(2) *COLLECTION OF FEES.*—The Administrator shall—

(A) collect the fees described in paragraph (1) from the users in advance of, or as reimbursement for, the provision by the Administrator of system-related services; and

(B) deposit the fees in the Fund.

(3) *FEE STRUCTURE.*—

(A) *IN GENERAL.*—The Administrator, in consultation with information technology vendors, shall determine through the contract award process described in subsection (e) the fee structure that is necessary to recover the full cost to the Administrator of providing system-related services, including—

(i) contractor costs relating to—

(I) materials and supplies;

(II) contracting and consulting;

(III) overhead;

(IV) information technology (including costs of hardware, software, and related services);

(V) information management;

(VI) collection of service fees;

(VII) reporting and accounting; and

(VIII) project management; and

(ii) costs of employment of direct and indirect Government personnel dedicated to establishing, managing, and maintaining the system.

(B) *ADJUSTMENTS IN FEE AMOUNT.*—

(i) *IN GENERAL.*—The Administrator, in consultation with the Board, shall increase or decrease the amount of a service fee determined under the fee structure described in subparagraph (A) to a level that will—

(I) result in the collection of an aggregate amount for deposit in the Fund that is sufficient and not more than reasonably necessary to cover current and projected system-related costs (including any necessary system upgrades); and

(II) minimize, to the maximum extent practicable, the accumulation of unused amounts in the Fund.

(ii) *EXCEPTION FOR INITIAL PERIOD OF OPERATION.*—The requirement described in clause (i)(II) shall not apply to any additional fees that accumulate in the Fund, in an amount that does not exceed \$2,000,000, during the 3-year period beginning on the date on which the system enters operation.

(iii) *TIMING OF ADJUSTMENTS.*—Adjustments to service fees described in clause (i) shall be made—

(I) initially, at the time at which initial development costs of the system have been recovered by the Administrator such that the service fee may be reduced to reflect the elimination of the system development component of the fee; and

(II) periodically thereafter, upon receipt and acceptance of the findings of any annual accounting or auditing report under subsection (d)(3), if the report discloses a significant disparity for a fiscal year between the funds collected from service fees under this subsection for the fiscal year and expenditures made for the fiscal year to provide system-related services.

(4) *CREDITING AND AVAILABILITY OF FEES.*—Fees authorized under this section shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts.

(d) *HAZARDOUS WASTE ELECTRONIC MANIFEST SYSTEM FUND.*—

(1) *ESTABLISHMENT.*—There is established in the Treasury of the United States a revolving fund, to be known as the “Hazardous Waste Electronic Manifest System Fund”, consisting of such amounts as are deposited in the Fund under subsection (c)(2)(B).

(2) *EXPENDITURES FROM FUND.*—

(A) *IN GENERAL.*—Only to the extent provided in advance in appropriations Acts, on request by the Administrator, the Secretary of the Treasury shall transfer from the Fund to the Administrator amounts appropriated to pay costs incurred in developing, operating, maintaining, and upgrading the system under subsection (c).

(B) *USE OF FUNDS BY ADMINISTRATOR.*—Fees collected by the Administrator and deposited in the Fund under this section shall be available to the Administrator subject to appropriations Acts for use in accordance with this section without fiscal year limitation.

(C) *OVERSIGHT OF FUNDS.*—The Administrator shall carry out all necessary measures to ensure that amounts in the Fund are used only to carry out the goals of establishing, operating, maintaining, upgrading, managing, supporting, and overseeing the system.

(3) *ACCOUNTING AND AUDITING.*—

(A) *ACCOUNTING.*—For each 2-fiscal-year period, the Administrator shall prepare and submit to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives a report that includes—

(i) an accounting of the fees paid to the Administrator under subsection (c) and disbursed from the Fund for the period covered by the report, as reflected by financial statements provided in accordance with—

(I) the Chief Financial Officers Act of 1990 (Public Law 101–576; 104 Stat. 2838) and amendments made by that Act; and

(II) the Government Management Reform Act of 1994 (Public Law 103–356; 108 Stat. 3410) and amendments made by that Act; and

(ii) an accounting describing actual expenditures from the Fund for the period covered by the report for costs described in subsection (c)(1).

(B) AUDITING.—

(i) **IN GENERAL.**—For the purpose of section 3515(c) of title 31, United States Code, the Fund shall be considered a component of an Executive agency.

(ii) **COMPONENTS OF AUDIT.**—The annual audit required in accordance with sections 3515(b) and 3521 of title 31, United States Code, of the financial statements of activities carried out using amounts from the Fund shall include an analysis of—

(I) the fees collected and disbursed under this section;

(II) the reasonableness of the fee structure in place as of the date of the audit to meet current and projected costs of the system;

(III) the level of use of the system by users; and

(IV) the success to date of the system in operating on a self-sustaining basis and improving the efficiency of tracking waste shipments and transmitting waste shipment data.

(iii) **FEDERAL RESPONSIBILITY.**—The Inspector General of the Environmental Protection Agency shall—

(I) conduct the annual audit described in clause (ii); and

(II) submit to the Administrator a report that describes the findings and recommendations of the Inspector General resulting from the audit.

(e) CONTRACTS.—

(1) **AUTHORITY TO ENTER INTO CONTRACTS FUNDED BY SERVICE FEES.**—The Administrator may enter into 1 or more information technology contracts with entities determined to be appropriate by the Administrator (referred to in this subsection as “contractors”) for the provision of system-related services.

(2) **TERM OF CONTRACT.**—A contract awarded under this subsection shall have a term of not more than 10 years.

(3) **ACHIEVEMENT OF GOALS.**—The Administrator shall ensure, to the maximum extent practicable, that a contract awarded under this subsection—

(A) is performance-based;

(B) identifies objective outcomes; and

(C) contains performance standards that may be used to measure achievement and goals to evaluate the success of a contractor in performing under the contract and the right

of the contractor to payment for services under the contract, taking into consideration that a primary measure of successful performance shall be the development of a hazardous waste electronic manifest system that—

(i) meets the needs of the user community (including States that rely on data contained in manifests);

(ii) attracts sufficient user participation and service fee revenues to ensure the viability of the system;

(iii) decreases the administrative burden on the user community; and

(iv) provides the waste receipt data applicable to the biennial reports required by section 3002(a)(6).

(4) PAYMENT STRUCTURE.—Each contract awarded under this subsection shall include a provision that specifies—

(A) the service fee structure of the contractor that will form the basis for payments to the contractor; and

(B) the fixed-share ratio of monthly service fee revenues from which the Administrator shall reimburse the contractor for system-related development, operation, and maintenance costs.

(5) CANCELLATION AND TERMINATION.—

(A) IN GENERAL.—If the Administrator determines that sufficient funds are not made available for the continuation in a subsequent fiscal year of a contract entered into under this subsection, the Administrator may cancel or terminate the contract.

(B) NEGOTIATION OF AMOUNTS.—The amount payable in the event of cancellation or termination of a contract entered into under this subsection shall be negotiated with the contractor at the time at which the contract is awarded.

(6) NO EFFECT ON OWNERSHIP.—Regardless of whether the Administrator enters into a contract under this subsection, the system shall be owned by the Federal Government.

(f) HAZARDOUS WASTE ELECTRONIC MANIFEST SYSTEM ADVISORY BOARD.—

(1) ESTABLISHMENT.—Not later than 3 years after the date of enactment of this section, the Administrator shall establish a board to be known as the “Hazardous Waste Electronic Manifest System Advisory Board”.

(2) COMPOSITION.—The Board shall be composed of 9 members, of which—

(A) 1 member shall be the Administrator (or a designee), who shall serve as Chairperson of the Board; and

(B) 8 members shall be individuals appointed by the Administrator—

(i) at least 2 of whom shall have expertise in information technology;

(ii) at least 3 of whom shall have experience in using or represent users of the manifest system to track the transportation of hazardous waste under this subtitle (or an equivalent State program); and

(iii) at least 3 of whom shall be a State representative responsible for processing those manifests.

(3) *DUTIES.*—*The Board shall meet annually to discuss, evaluate the effectiveness of, and provide recommendations to the Administrator relating to, the system.*

(g) *REGULATIONS.*—

(1) *PROMULGATION.*—

(A) *IN GENERAL.*—*Not later than 1 year after the date of enactment of this section, the Administrator shall promulgate regulations to carry out this section.*

(B) *INCLUSIONS.*—*The regulations promulgated pursuant to subparagraph (A) may include such requirements as the Administrator determines to be necessary to facilitate the transition from the use of paper manifests to the use of electronic manifests, or to accommodate the processing of data from paper manifests in the electronic manifest system, including a requirement that users of paper manifests submit to the system copies of the paper manifests for data processing purposes.*

(C) *REQUIREMENTS.*—*The regulations promulgated pursuant to subparagraph (A) shall ensure that each electronic manifest provides, to the same extent as paper manifests under applicable Federal and State law, for—*

(i) *the ability to track and maintain legal accountability of—*

(I) *the person that certifies that the information provided in the manifest is accurately described; and*

(II) *the person that acknowledges receipt of the manifest;*

(ii) *if the manifest is electronically submitted, State authority to access paper printout copies of the manifest from the system; and*

(iii) *access to all publicly available information contained in the manifest.*

(2) *EFFECTIVE DATE OF REGULATIONS.*—*Any regulation promulgated by the Administrator under paragraph (1) and in accordance with section 3003 relating to electronic manifesting of hazardous waste shall take effect in each State as of the effective date specified in the regulation.*

(3) *ADMINISTRATION.*—*The Administrator shall carry out regulations promulgated under this subsection in each State unless the State program is fully authorized to carry out such regulations in lieu of the Administrator.*

(h) *REQUIREMENT OF COMPLIANCE WITH RESPECT TO CERTAIN STATES.*—*In any case in which the State in which waste is generated, or the State in which waste will be transported to a designated facility, requires that the waste be tracked through a hazardous waste manifest, the designated facility that receives the waste shall, regardless of the State in which the facility is located—*

(1) *complete the facility portion of the applicable manifest;*

(2) *sign and date the facility certification; and*

(3) *submit to the system a final copy of the manifest for data processing purposes.*

(i) *AUTHORIZATION FOR START-UP ACTIVITIES.*—*There are authorized to be appropriated \$2,000,000 for each of fiscal years 2013 through 2015 for start-up activities to carry out this section, to be*

offset by collection of user fees under subsection (c) such that all such appropriated funds are offset by fees as provided in subsection (c).

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