

information on the cost of resources, materials, labor and capital employed to produce the units of output." The language in this definition follows closely the language in the 2002 NAICS Manual, and is also consistent with the same language EPA used in a separate rulemaking under EPA's Toxic Chemical Release Reporting program (see 40 CFR 372.3). We request comment on our use of this definition for today's proposed rule. (An additional point, the phrase "generally at a single physical location" in the proposed definition of establishment does not mean that under today's proposal, "same industry" is somehow limited only to materials generated and reclaimed on site. As discussed throughout this preamble, today's proposed exclusion can apply to materials sent off site from the generator facility.)

**Multiple Establishments.** Thus far, we have discussed how the NAICS system defines an establishment, and how that establishment is classified to an industry from the 2002 NAICS Manual of industry classifications. We are proposing that hazardous secondary materials, generated at an establishment, are excluded if reclaimed at the same or another establishment, whether on-site or off-site, where the establishment reclaiming the material is classified under the same NAICS (at the 4-digit level) classification as the generating establishment (industry). This approach is relatively straightforward when it involves transactions within and between sites where each site has a single establishment, classified to a particular NAICS industry group. All one needs to know is the correct industry classifications, and then determining whether or not the secondary material is being reclaimed within the generating industry in accordance with today's proposed exclusion should be a straightforward task.

However, some locations will have two or more establishments operating, where these establishments are classified differently from one another under the NAICS. Where there are two or more different industries (establishments) operating at the location where the secondary material is generated, or at the location where the secondary material is reclaimed, the individual establishments that generate and reclaim the secondary materials, respectively, must be classified the same under NAICS, in order to be excluded under today's proposed rule. In other words, where there are multi-industry sites, we look to whether NAICS classifications of the specific

establishments generating and reclaiming the secondary material are the same. We are not suggesting that a particular multi-industry site be classified as a single industry, based for example on some type of determination of the "dominant" or "primary" industry or establishment at that site.<sup>9</sup> In fact, one scenario under today's proposal would be that secondary materials are not considered to be reclaimed in a continuous process within the same industry when sent from one industry to a different industry on the same site. While there may be opportunities for legitimate recycling between two different industries at the same site, for reasons already discussed, we are limiting today's exclusion to a "same industry" approach. Although "inter-industry" recycling is outside the scope of today's proposal, we would be interested in obtaining additional information on specific examples of situations where two different industries (based upon the NAICS definition proposed today) are located at the same site, and where hazardous secondary materials are generated in one industry and could be reclaimed in a different, on-site industry. Again, this type of recycling is outside the scope of today's proposal, but we solicit comment and would be interested in obtaining examples of where this type of recycling might occur.

**Specialty Batch Chemical Manufacturers.** EPA is also aware of certain practices within the chemical manufacturing industry that might present unique situations regarding defining "intra-industry" reclamation using the NAICS approach. Specifically, within the chemical manufacturing industry, larger manufacturers will contract out production of certain chemicals to smaller manufacturers (referred to as batch or tolling operations). These smaller manufacturers produce chemicals in batches, where the product slates may change several times over the course of a year, for example. These smaller

<sup>9</sup> Whereas the NAICS attaches an industry classification to an individual establishment based upon the most significant activity within that establishment (determined using either the "primary" activity rule, or in some other way as discussed for certain establishments with combined activities), the NAICS Manual does not appear to have any type of "primary rule" for identifying the primary industry at multi-industry facilities. However, there is at least one example of where determining the primary industry is required in a different program; the EPA Toxic Release Inventory (TRI) regulations require that a primary establishment, or industry, be identified at multi-establishment complexes. This is in order to determine applicability of the TRI rules, because the TRI rules, because the TRI program applies to some industries and not others. 40 CFR 372.22(b).

manufacturers (often referred to collectively as Specialty Batch Chemical Manufacturers) may generate hazardous secondary materials that could be returned to the larger chemical manufacturer for reclamation along with similar secondary materials (generated by the larger facility from producing the same chemical). To the extent that the NAICS approach proposed today classifies both establishments (the specialty batch establishment, and the larger chemical manufacturing establishment) the same at the 4-digit level, this reclamation would be excluded under today's proposal. As stated above, we would look to whether the NAICS classifications of the specific establishments generating and reclaiming the secondary material are the same. However, we solicit comment on this particular situation, and are interested to know if there are specific examples of where "same industry" reclamation, as outlined under today's proposed rule, would be precluded as a result of uncertain application of the NAICS classification approach at specialty batch chemical facilities (e.g., due to frequently changing product slates, or different products being produced from the same equipment at different times, etc.).

Under today's definition of industry, we are proposing that owners and operators, as well as implementing agencies, rely on the NAICS system to identify establishments and define the bounds of an industry. As our lead approach, we are not proposing to overlay additional criteria to determine whether or not particular reclamation units, processes, or activities are "adequately" associated with an industry so as to be included within the scope of that industry definition. In fact, we believe the NAICS approach simplifies this determination because it generally views establishments as a collection of activities, and provides a consistent system for classifying the collection of activities as an industry. Generally, where reclamation units, processes or activities are located at a particular site, and are supporting the principal activities of that industry in a legitimate fashion, they should be considered part of that establishment (industry) unless the NAICS approach (e.g., industry descriptions or other guidance in the 2002 NAICS Manual) yields a different answer.

For instance, in the example provided in Section III.A.4. above, if a paint manufacturer reclaims used solvents from within the paint manufacturing industry, the used solvents would not be wastes under today's proposed exclusion. If, based upon the NAICS,