

In addition to requiring direct transfer of excluded materials from generators to reclaimers, and using the speculative accumulation concept to establish a time limit on storage of such materials, we considered whether there are other aspects of "continuous process" that we should attempt to capture in defining the term. For example, it could be argued that inherent in the concept of "continuous process" is the idea of regularity or predictability; *i.e.*, that the generation and subsequent reclamation of materials should take place in a more or less routine, ongoing manner. It might be further argued that the term "continuous process" implies some kind of physical linkage between the processes that generate specific secondary materials and the processes that reclaim them. Similarly, some might say that some type of geographic limit should also be imposed, such that (for example) materials shipped from New Jersey to California might not be considered within a continuous process, even if they remained within the same industry.

EPA chose not to impose further tests or requirements in defining continuous process, beyond the limits established for speculative accumulation. For one thing, we believe that placing additional restrictions on what we would consider to be a continuous process for the purpose of this rule could create additional complexity in its implementation. Such additional restrictions might also be somewhat arbitrary, since it would be difficult to develop restrictions appropriate to the wide range of materials and processes potentially covered by this rule. Such an approach could also discourage beneficial recycling in some industries where generation and reclamation of secondary materials happen in a less than routine, predictable manner. We are interested, however, in receiving comments on this issue, particularly any specific suggestions as to how today's proposed definition of continuous process could be refined or enhanced, and the benefits that such changes would bring.

#### 8. What Type of Notification Would Be Required?

Today's proposal would require generators who wish to use the 40 CFR 261.2(g) exclusion to submit a one-time notice to EPA or the authorized state. As specified in 40 CFR 261.2(g)(3), the notice would need to identify the name, address and EPA ID number (if applicable) of the generating facility, the name and telephone number of a contact person for that facility, the type of material(s) that would be subject to

the exclusion, and the industry that generated the material, as classified according to Appendix X of Part 261.

This notice requirement would only apply to generators of secondary materials that have previously been regulated under RCRA Subtitle C, and that would become excluded under today's proposal. Thus, generators of materials that have been previously exempted or excluded from regulation under other provisions because they are recycled would not need to submit a one-time notice. If a generator were to generate both types of materials (*i.e.*, materials that were previously regulated, as well as materials that were previously excluded or exempted under different provisions), the generator would have to submit a one-time notice only for the materials that were previously regulated.

As discussed in the following section of this preamble, we are proposing today to modify or eliminate existing exemptions and exclusions that "overlap" with the proposed 40 CFR 261.2(g) exclusion. Thus, materials that heretofore have not been subject to regulation under existing provisions would remain unregulated, but would be subject to the new exclusion. It should be noted that, with few exceptions, the current regulations do not require generators of excluded materials to notify EPA or authorized state agencies. Requiring these generators to submit one-time notices once they become subject to the new 40 CFR 261.2(g) exclusion would in effect be a more stringent requirement. Since today's proposal is intended to be generally de-regulatory, we do not believe it appropriate to impose such a new notice requirement on generators who have not been required to submit such notices under the current regulations.

To illustrate, generators of secondary materials that (for example) are recycled in a "closed loop" system have been excluded from regulation under 40 CFR 261.2(e)(iii), and have not heretofore been required to notify the Agency of their recycling activities. Since we assume that closed loop recycling is intra-industry, today's proposal would subsume and eliminate the existing closed loop exclusion, and the materials would become subject to today's proposed exclusion. These generators would not need to submit the one-time notice required under proposed 40 CFR 261.2(g)(4). However, if a generator has been recycling regulated hazardous wastes that would become newly excluded under today's proposal, he/she would need to submit the notice.

The Agency is not proposing any specific format or form for these one-time notices. However, to provide one idea of how such a notice might be formatted, we have included a sample form in the docket for today's rule (*see Sample Notification Form for Materials that are Excluded from the Definition of Solid Waste Under 40 CFR 261.2(g)*). This sample form is also available on the web site that EPA has established for this rulemaking.

The intent of today's proposed notification requirement is to provide basic information to regulatory agencies as to who would be managing hazardous secondary materials under the terms of today's exclusion, and the types of materials being recycled. We believe our right to require such basic notification is inherent in our authority to regulate discarded materials, and we consider this to be the minimum information needed to enable credible oversight of such activities, and ensure that the terms of the exclusion are being met by generators and recyclers. As such, we believe that this minimal notification is a reasonable requirement for those who will find advantage in the regulatory exclusion proposed today. We estimate that this requirement will impose an incremental reporting "burden" of approximately one hour per affected facility.

It should be understood that as proposed, providing this notification would not be required more than once. We are also requesting comment, however, on an alternative option for such notification. Under this alternative, generators would be required to submit revised notices if certain information on the original notice were to change. Requiring submission of revised notices might particularly be appropriate, for example, if the location or ownership of the generating facility changes or if the type of excluded material were to change.

Another option being considered with regard to reporting would be a requirement that notifications be signed by a responsible corporate official. In addition, we are considering the option of requiring persons using the 40 CFR 261.2(g) exclusion to submit periodic (*e.g.*, annual) reports detailing their recycling activities, to provide information on the types and volumes of materials recycled, where off-site shipments were sent, the types of reclamation processes used, the types of products produced from the reclamation processes, how residuals from reclamation processes were managed, and other relevant information. Requiring such additional information could give regulators and the public a