

much clearer picture of the types of recycling being conducted under this exclusion, where it is being done, and by whom. We are also considering (and solicit comment on) the option of requiring the information in the proposed notice to be submitted in a particular format (such as in the sample form cited above), or submitted electronically.

Recordkeeping. Section 261.2(f) requires persons managing materials under exclusions from the Subtitle C definition of solid waste to be able to provide "appropriate documentation" that they meet the terms of the exclusion they are claiming. Nevertheless, in addition to the notification requirements discussed above, we are considering the option of requiring generators and reclaimers to keep on-site records relating to types and volumes of materials they handle. For example, we are considering requiring generators of materials subject to this exclusion to keep records of volumes generated, volumes reclaimed onsite, and volumes sent offsite, while requiring offsite reclaimers to keep records of shipments received and volumes actually recycled.

The Agency chose not to include more frequent or more detailed reporting requirements in today's proposal such as those discussed above, primarily because we are committed to minimizing recordkeeping and reporting requirements. In fact, the Agency recently proposed a "burden reduction" rule that would eliminate a number of existing RCRA reporting and record keeping requirements that the Agency believes are unnecessary or duplicative (67 FR 2517, January 17, 2002).

We invite comment on whether or not any (or all) of the regulatory options discussed above for increased reporting and recordkeeping by generators and other parties may be necessary and appropriate in providing sufficient data for regulatory oversight, and should therefore be included in the final rule.

9. What Conforming Changes to Existing Regulations Are Proposed?

As discussed above, today's proposed exclusion for intra-industry recycling would affect a number of existing regulatory provisions that also provide regulatory relief for hazardous secondary materials that are recycled. We are therefore proposing a number of specific "conforming changes" to the existing regulations to address these situations where today's proposed regulatory exclusion "overlaps" with existing regulatory provisions. Since we are co-proposing two different options for defining "continuous process within

the same industry" (see section III.A.3 of this preamble), the conforming changes that would be necessary would differ depending on which option is adopted in the final rule. The following is an explanation of our proposed conforming changes for each regulatory option.

a. Proposed conforming changes for co-proposed regulatory Option #1—Provisions that would be deleted. Under regulatory Option #1, several existing regulatory provisions that provide waivers or exclusions for recycled hazardous secondary materials would be rendered entirely moot, since all of the materials that are potentially subject to these provisions would be excluded under today's proposal for intra-industry recycling. To illustrate, 40 CFR 261.4(a)(6) currently provides an exclusion from the definition of solid waste for "pulping liquors * * * that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively." Under proposed Option #1 this existing exclusion would no longer be needed, since we believe that the exclusion for intra-industry recycling would cover all of the pulping liquors that are currently excluded under 40 CFR 261.4(a)(6).

The following is a list of existing provisions that would be eliminated entirely under today's co-proposed Option #1. We believe that each of these provisions would completely overlap with the Option #1 exclusion, and we are thus proposing to delete them entirely if the Agency decides to finalize this option.

A. Section 261.2(e)(1)(iii). Under this existing provision, materials are not solid wastes when they are recycled by being "returned to the original process from which they are generated, without first being reclaimed or land disposed." We are proposing to eliminate this provision, since we believe that all of the materials that it potentially applies to would be addressed by today's proposed exclusion (Option #1) for intra-industry recycling.

B. Section 261.4(a)(6). This existing provision excludes from the definition of solid waste "pulping liquors (*i.e.*, black liquors) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively." We believe that all of the materials excluded under this current provision would be excluded under 40 CFR 261.2(g) (Option #1), and are therefore proposing to eliminate this provision.

C. Section 261.4(a)(8). This existing "conditional exclusion" is for "secondary materials that are reclaimed

and returned to the original process or processes in which they were generated where they are reused in the production process." This is often referred to as the "closed loop reclamation" exclusion. The following conditions apply to this exclusion:

- Only tank storage may be involved, and the entire process through completion of reclamation must be closed by being entirely connected with pipes or other comparable closed means of conveyance;
- Reclamation must not involve controlled flame combustion;
- The secondary materials must not be accumulated in tanks for over twelve months without being reclaimed; and
- The reclaimed material must not be used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

This conditional exclusion would no longer be necessary if the exclusion in today's proposed Option #1 were promulgated, and we are thus proposing to eliminate it. In fact, such closed loop recycling processes may be particularly clear examples of intra-industry recycling that does not involve discard, and that would therefore be covered under the proposal.

2. Exclusions and Variances That Would Be Partially Affected by Today's Co-proposed Option #1

In addition to the existing regulatory provisions that could be eliminated completely under today's proposed Option #1, we are proposing conforming changes to several other provisions that would only partially "overlap" with the 40 CFR 261.2(g) exclusion. Most of these existing exclusions and exemptions are not contingent on intra-industry recycling, and allow secondary materials to be generated and reclaimed in different industries. Thus, in cases where materials are generated and reclaimed in different industries, the existing exclusions would still be needed to provide regulatory relief for such materials. Accordingly, EPA is proposing to retain existing exclusions and waivers that allow for recycling across different industries, while clarifying that the proposed 40 CFR 261.2(g) exclusion will apply to materials that are recycled in a continuous process within the same industry. These existing provisions are in some cases conditioned on compliance with certain management practices and/or notification or record keeping requirements; we are not proposing to modify the substance of these provisions. Rather, in each case we are simply proposing to add regulatory language to clarify that the