commingling with the nonhazardous streams, and that the total volume of hazardous streams are no more than 10,000 gallons/day, no segregation and/ or treatment would be required. The 1% total flow criteria is consistent with the existing de minimis exemption for laboratory wastes (§ 268.1(e)(5)); however, the Agency solicits comment on the 1% criteria, the 10 times UTS criteria as well as the 10,000 gallons/day maximum—should these numbers be higher, lower, or dropped?

The Agency intends to continue analyzing collected data that may provide additional justification for, or alternatively, cause the Agency to modify any or all of the criteria on which it has based the de minimis exemption for injected waste. This analysis will be conducted in conjunction with revising the Regulatory Impact Analysis for underground injected wastes, and may include additional computer modeling used in assessing the health risks posed by Class I injection wells. The Agency may conduct this analysis, for example, by varying specific parameters in the modeling, such as well pump rates, total volume of waste injected, and waste concentrations, and by altering postulated exposure scenarios describing health risks posed by injection of Phase III wastes. Upon conclusion, the analysis may support the proposed de minimis criteria or may cause the Agency to revise them in the final rule. The Agency solicits any comment on this planned approach and any alternative suggestions.

The Agency is proposing that if a generator determines that he meets the requirements of the de minimis exemption, that he place a one-time notice in his files stating the % flow and concentration of the underlying hazardous constituents, and volumetric flow of prohibited wastestreams (i.e. streams exhibiting a characteristic at the point of generation). The concentration of underlying hazardous constituents would have to be determined through monitoring, and the % flow can be determined through several methods. One method for estimating annual average wastewater stream flow is to use the maximum annual production capacity of the process equipment, along with knowledge of the process and mass balance. A second method would involve using measurements that are representative of average process wastewater generation rates. A third method is to select the highest flow rate of process wastewater from the historical records. Other knowledgebased methods, which would be less expensive alternatives to actual

measurement, could also be used. EPA solicits comment on these alternatives.

## D. Point of Generation Discussion

## 1. Introduction

It has long been the rule that land disposal prohibitions apply at the point hazardous wastes are generated. See e.g. 55 FR at 22652 (June 1, 1990); 261.3(a)(2)(iii). Some members of the regulated community, including the Chemical Manufacturer's Association (CMA), have asked EPA to reconsider this issue in light of the Third Third rule and the D.C. Circuit opinion interpreting that rule. See CWM v. EPA (976 F. 2d 2 D.C. Cir. 1992). Among other things, the court held that hazardous constituents present above concentrations "sufficient to pose a threat to human health and the environment" in prohibited wastes, including characteristic wastes, must meet LDR treatment standards. See 976 F. 2d at 16.

The regulated community has argued that continued application of the point of generation rule could lead to situations where prohibitions would attach to particular characteristic wastestreams and trigger a host of potentially disproportionate consequences, without necessarily furthering any of the protective objectives of the LDR program. Many industrial processes consist of hundreds or thousands of streams, some of which exhibit characteristics only for a short time or (for batch processes) intermittently. The streams often exist within the physical confines of an industrial process, and may be collected within a common sump or other aggregation point. If one of the streams should exhibit a characteristic of hazardous waste, the entire system of wastewater treatment or other management could be affected if the system contains an impoundment or injection well.

These commenters have also requested that EPA revisit the current interpretation that prohibitions attach at the instant of generation and that this requires in certain cases knowledge or monitoring of many internal streams. They argue that some of these streams may not be readily amenable to monitoring because everything within the process is hard-piped to a common collection point. It should be noted that EPA previously considered the practical difficulties associated with sampling or monitoring wastes within closedprocess units. See 55 FR 25760, 25765 (July 8, 1987).

The commenters have expressed concern that there are likely to be

circumstances where mass loadings of hazardous constituents to the environment are not significantly affected by allowing initial aggregation of residual streams from a process. They also have expressed concern with the practical impacts and achievability of determining the precise content of potentially thousands of internal wastestreams within an industrial facility.

In response to these concerns raised by industry groups following the Third Third opinion, the Agency is soliciting comment on a number of approaches to modify the current point of generation approach for making LDR determinations for certain types of wastes. These approaches also could be applied more generally for purposes of subtitle C to determine at what point a waste is generated.

## 2. Background

EPA has required LDR determinations to be made at the point which hazardous wastes are generated since the Solvents and Dioxins final rule (51 FR 40620, November 7, 1986). EPA asserted the authority to make LDR determinations at either point of generation or point of disposal in the Third Third final rule (55 FR 22652–53). The court invalidated such selectivity (976 F. 2d at 23), but did hold that at least the dilution prohibition did not have to apply to invalidate use of CWA treatment impoundments performing RCRA-equivalent treatment. 2d. at 23–4.

In the course of finalizing the California list rule, EPA solicited comment on a "point of aggregation" approach to assessing when prohibitions attached. (See 52 FR at 22356 (June 11, 1987) where point of aggregation is defined as a point of common aggregation preceding centralized wastewater treatment.) Most commenters at that time criticized such an approach on the grounds that the 'point of aggregation'' was by no means readily determinable and could result in wastes being treated less or, in some cases, being diluted impermissibly. EPA rejected the approach for these reasons. 52 FR at 25766 (July 8, 1987).

The following options, which are being presented for comment, would narrowly redefine the point at which the land disposal prohibitions attach.

3. Similar Streams Generated by Similar Processes

One possible revision would address situations in which like streams are generated from like processes and combined as a matter of routine practice. An example would be collection of rinses from sequential