

principally concern the availability of LDR relief for nonwastewaters which meet the appendix XI of 40 CFR part 261 exit levels at their point of generation, are discussed in more detail in section H. below.

### *C. Requirements for Obtaining an Exemption*

The following requirements would be applicable to both of the approaches discussed above. Requirements for meeting the contingent management exemption would include the sampling and testing requirements of § 261.37 (b)(1), the public notice requirements of § 261.37 (b)(3) and the notification to the implementing Agency requirements of § 261.37 (b)(4), similar to those respective requirements for the base exemption in §§ 261.36 (b) (1), (3) and (4). The Agency notes that these provisions would be directly enforceable Subtitle C requirements imposed prior to obtaining an exemption rather than conditions for maintaining the exemption.

#### **1. Sampling and Testing Requirements for Contingent Management Exemptions**

The Agency is proposing that the sampling and testing requirements for the contingent management exemption be the same as those proposed for the base exemption in Section 261.36 (b)(1). The Agency requests comment on whether the sampling and testing requirements for the base exemption would be appropriate for the contingent management exemption.

#### **2. Requirements for Public Participation in Contingent Management Exemptions**

To provide the public with access to information, the Agency is proposing to require compliance with the public notice requirements in proposed § 261.37(b)(3), similar to those in § 261.36(b)(3). The first time a claimant provides the Agency with notification of an exemption claim for contingent management wastes, he will be required to publish a notice of the claim in a major local newspaper general circulation. The notice must include the name and address of the facility, the description of the waste (as contained in the notification), a brief general description of the process producing the waste, an estimate of the quantities of waste claimed to be exempt, and information about the Agency where the claimant has sent the notification and supporting information. In addition, the public notice must include that the waste meets the contingent management exemption levels in appendix XI of 40 CFR part 261 and that the waste will be

disposed of in a monofill or land disposal unit.

#### **3. Notification Requirements for Contingent Management Exemptions**

To qualify for a contingent management exemption, a claimant would need to submit to the authorized State Agency Director a formal notification of its claim that waste meets the contingent management exemption levels in Appendix XI of 40 CFR part 261 and will be managed in accordance with the management conditions. In addition to the requirements under § 261.36 (b)(4), the contingent management exemption notification to the implementing Agency must include an accompanying certification that the waste meets the contingent management exemption levels in appendix XI of 40 CFR part 261 and that the waste will be disposed of in a monofill or land disposal unit.

The Agency requests comment on whether these requirements, similar to § 261.36 (b)(1),(3) and (4), will provide adequate information to the implementing agency and the public on what exemption levels, i.e., appendix X to 40 CFR part 261 or appendix XI of 40 CFR part 261, are being claimed and on how the waste is being managed. These provisions would be requirements rather than conditions.

#### **D. Implementation Conditions**

As set out in § 261.37 (d) and explained in the base exemption implementation preamble (section VIII. B., Implementation Conditions) certain conditions have to be met to maintain the exemption after the claim has become effective. Under both option 1A and 1B, the following conditions would have to be met to maintain the contingent management option: Submitting changes in notification information to the Director within 10 days of the change, following the schedule for retesting, preparing and complying with a sampling and analysis plan for every retest, maintaining constituent concentrations in the nonwastewater at or below the exemption levels in appendix XI, meeting applicable treatment levels under § 268.40, and maintaining records on-site for three years. These conditions are very similar to those proposed for the base exit in Section VIII of today's proposed rulemaking. In addition to those conditions established for the base exemption, the claimant would also have to ensure that the waste was managed in a qualifying unit.

Claimants, under both options, always have the obligation to identify whether they are generating a hazardous waste

and to notify the appropriate government official if they are generating a hazardous waste. (Section 3010; 40 CFR 261.11.) If any nonwastewater claimed as exempt under the contingent management proposal tested above the exit levels in appendix XI to 40 CFR part 261 at any time, that waste and any mixture or derived-from forms of that waste would have to be managed as hazardous waste, including compliance with all notification requirements, until testing demonstrated that the waste was below the exit levels.

#### **1. Tracking Conditions**

EPA is proposing to modify the manifest regulations to reflect the fact that wastes exiting under this exemption need not be disposed of in treatment, storage or disposal facilities that are subject to the requirements of § 264.71–264.72 or Section 265.71–264.72 requiring the facility that receives the waste to sign and return the manifest. EPA is not proposing to require the owners and operators of nonhazardous waste facilities that accept wastes exempted under this option to comply with these duties. As EPA concluded when it decided not to extend recordkeeping duties related to the LDR program to nonhazardous waste facilities accepting de-characterized hazardous wastes, it would probably be difficult to provide reasonable notice to all the members of this diverse universe, which has little or no other contact with the hazardous waste management regime, of these Subtitle C responsibilities.

EPA is proposing instead that the claimant of the exemption be responsible for ensuring that the manifest is returned and that it—or some other document—provides information showing that the facility designated on the manifest did in fact receive the waste and did place it in a landfill or monofill (and not a land treatment unit). Billing documents may already supply some of the needed information. Where they do not, EPA believes that claimants should generally be able to contract with the receiving facilities to obtain the necessary information. In some states, nonhazardous waste rules may also require disposers to furnish generators with some of the necessary information. EPA proposes to revise the manifest document as necessary to ensure that nonhazardous waste facilities can be designated as receiving facilities for listed wastes meeting all of the other requirements for obtaining an exemption under this option.