

within an industry Sub-sector.⁴ Generally, these categories seem to represent a more diverse set of process activities than occurs under other 4-digit NAICS codes. For example, NAICS 3259 (Other Chemical Product and Preparation Manufacturing) includes Printing Ink Manufacturing; Explosives Manufacturing; Custom Compounding of Purchased Resins; Photographic Film, Paper, Plate, and Chemical Manufacturing; and All Other Miscellaneous Chemical Product and Preparation Manufacturing. Moreover, as illustrated by the example 3259 industry group, even within the "Other" 4 digit designation there are classifications (usually ending with an "8" or "9") that are often labeled as "All Other." Using the proposed 4-digit NAICS approach, all of these categories, and activities under these categories, would fall under the same Industry Group (3259).

The "All Other" classifications also occur in industry groups that are not designated as "Other" in and of themselves. Using the Chemical Manufacturing example, there is NAICS 325188 (All Other Basic Inorganic Chemical Manufacturing) and 325199 (All Other Basic Organic Chemical Manufacturing). Within each of these categories, the NAICS provides eight examples of chemical manufacturing that fall under these categories (e.g., Enzyme Proteins, Plasticizers, and Silicone manufacturing under Organic; Hydrochloric acid, Sulfuric acid, Carbides, and Fluorine manufacturing under Inorganic). Using the proposed 4-digit NAICS approach, these categories would fall under the same Industry Group (3251).

Although EPA rejected an approach that would mix and match industry definitions using differing levels of the NAICS hierarchy, due to concerns that this would result in a NAICS list that would be too complicated while not achieving a clear benefit, EPA is soliciting comment on whether those Industry Groups or Industry designations that involve "Other" or "All Other" categorizations should be handled differently given the potential diversity within those categories.

Existing Definitions of "Industry" in RCRA Regulations

In some cases, EPA has promulgated definitions of certain "industries" in the RCRA regulations, to clarify the scope of a particular hazardous waste listing, hazardous waste exemption, or exclusion from the definition of solid waste. For example, the hazardous waste listing for "spent pickle liquor from the iron and steel industry" (K062) references SIC codes 331 and 332 to describe the scope of the listing. 40 CFR 261.32. Other examples are found at 40 CFR 261.32, a list of hazardous wastes from "specific sources." These wastes are grouped by "industry" category (e.g., inorganic pigments, organic chemicals, inorganic chemicals, pesticides, etc.), and each waste has a detailed listing description to help identify the waste.

The definition of industry being proposed today is only applicable to the changes we are proposing to make to the definition of solid waste for purposes of Subtitle C. For example, we are not proposing to change how the "source specific" hazardous wastes listed in 40 CFR 261.32 are defined. We also do not intend today's proposed redefinition of solid waste to change existing exclusions in a manner that regulates hazardous secondary materials as solid wastes, where prior rulemakings have established that these materials are excluded.

Finally, EPA has previously defined the scope of the petroleum and mineral processing industries in earlier rules establishing exclusions from the definition of solid waste for Subtitle C regulatory purposes. We are proposing to retain these definitions for these industries in lieu of using the NAICS approach under today's rule. As discussed below, we have already looked closely at the recycling of hazardous secondary materials within these industries, and have already described in various rulemaking documents the types of activities and operations that comprise these industries, for purposes of existing exclusions. To implement these existing definitions under today's proposal, we have added clarifying provisions to proposed Appendix X (Industries for the Purpose of 40 CFR 261.2(g)).

Primary Mineral Processing. EPA has described the scope of the primary mineral processing industry in several previous rulemakings, beginning with the 1986 Regulatory Determination on extraction and beneficiation wastes (51 FR 24496), and the September 1, 1989 Mining Waste Exclusion (54 FR 36592). In the September 1, 1989 rule, we articulated the factors we would use to

determine the scope of the mineral processing industry.⁵ We are proposing to require the use of these same factors for determining whether a generating or reclamation process falls within the mineral processing industry. Specifically:

- Operation must follow the beneficiation of an ore or mineral and does not include beneficiation as defined in 40 CFR 261.4(b)(7)(i).
- Operation must serve to remove the desired product from or enhance the characteristics of an ore or mineral or a beneficiated ore or mineral.
- Operation uses feedstock that is comprised of less than 50 percent scrap materials.
- Operation produces either a final or an intermediate to the final mineral product.
- Operation does not combine the mineral product with another material that is not an ore or mineral, or beneficiated ore or mineral (e.g., alloying) and does not involve fabrication or other manufacturing activities.

EPA is proposing to retain this industry classification, rather than deferring to the various NAICS categories, for purposes of implementing the exclusion for primary mineral processing secondary materials recycled within the industry, because it has examined this sector in detail and believes that its current system reflects the boundaries of this industry better than the 4-digit NAICS approach.

For secondary materials that would not be excluded under today's proposed rule, mineral processing facilities may continue to determine whether those materials are exempt from Subtitle C regulation under the Bevill exclusion, section 3001(b)(3)(A)(iii) of RCRA and 40 CFR 261.4(b)(7). They must use currently applicable regulatory provisions, as clarified by the criteria articulated in preamble to the September 1, 1989 **Federal Register** (54 FR 36592). Note that to be excluded under the Bevill Amendment, solid wastes must be uniquely associated with the mineral processing industry. For purposes of today's rule, non-uniquely associated wastes, although not Bevill exempt, are still eligible for today's proposed exclusion if they are generated and reclaimed within the mineral processing industry.

⁴ For example: NAICS 2379—Other Heavy and Civil Engineering Construction; 2389—Other Specialty Trade Contractors; 3259—Other Chemical Product and Preparation Manufacturing; 3279—Other Nonmetallic Mineral Product Manufacturing; Other Electrical Equipment and Component Manufacturing; 3379—Other Furniture Related Product Manufacturing; 3399—Other Miscellaneous Manufacturing.

⁵ Additional guidance was provided in the Phase IV Land Disposal Restrictions (LDR) preamble (63 FR 28556; May 26, 1998). EPA stated that it views "mineral processing" to include but not be limited to 41 primary mineral processing sectors described in the Agency's 1996 Identification of Mineral Processing Sectors and Waste Streams.