

List of Subjects**40 CFR Part 260**

Administrative practices and procedure, Confidential business information, Hazardous waste.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: October 20, 2003.

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Acting Administrator.

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

**PART 260—HAZARDOUS WASTE
MANAGEMENT SYSTEM: GENERAL**

Subpart C—[Amended]

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. Section 260.30 is amended by removing and reserving paragraph (b), and by revising paragraph (c) to read as follows:.

§ 260.30 Variances from classification as solid wastes.

* * * * *

(c) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered. If the materials are reclaimed as part of a continuous process within the generating industry, they are subject to the exclusion in § 261.2(g) rather than the standards and criteria listed in § 261.31(c).

§ 260.31 [Amended]

3. Section 260.31 is amended by removing and reserving paragraph (b).

**PART 261—IDENTIFICATION AND
LISTING OF HAZARDOUS WASTE**

Subpart A—[Amended]

4. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

5. Section 261.2 is amended by:

a. Revising the heading for Column 3 of Table 1 in paragraph (c)(4) to read: Reclamation (261.2(c)(3)), except for materials marked with an “*” that are generated and reclaimed in a continuous process within the generating industry, as provided in § 261.2(g).

b. Revising paragraph (c)(3).
c. Removing paragraph (e)(1)(iii).
d. Adding paragraphs (g) and (h).
The revisions and additions read as follows:

§ 261.2 Definition of solid waste.

* * * * *

(c) * * *

(3) Reclaimed. Materials noted with a “-” in column 3 of Table 1 are not solid wastes when reclaimed. Materials noted with an “*” in column 3 of Table 1 are solid wastes except when generated and reclaimed in a continuous process within the same industry, as provided in paragraph (g) of this section.

* * * * *

(g) *Hazardous secondary materials generated and reclaimed in a continuous process within the same industry.* (1) Spent materials, listed sludges and listed by-products that are identified in paragraph (c)(3) of this section and accompanying Table 1 of this section are not discarded, and therefore are not solid wastes, if they are generated and reclaimed in a continuous process within the same industry. This exclusion does not apply, however, to the following materials:

(i) Materials that are inherently waste-like, as provided in paragraph (d) of this section.

(ii) Materials used in a manner constituting disposal, or used to produce products that are applied to the land, as provided in paragraph (c)(1) of this section.

(iii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels, as provided in paragraph (c)(2) of this section.

Option 1 for Paragraph (g)(2)

(2) For the purposes of this paragraph:

(i) Both the generation and reclamation of the hazardous secondary materials must occur within a single industry listed in Appendix X of this Subpart. Such reclamation may involve one or more processing steps, provided that all steps take place within the same industry in which the secondary material was generated, and that such reclamation produces a product or ingredient that is used or reused without further reclamation. Reclamation steps need not take place at the site where the material was generated, provided such reclamation activities take place within the generating industry.

(ii) If such reclamation produces any materials that are sent to a different industry for further reclamation, those materials will not be eligible for the exclusion in paragraph (g)(1) of this section. This would not, however, affect

the exclusion for other materials that are generated and reclaimed within the same industry.

(iii) The guidelines and industry classifications specified in Appendix X of this Part must be used to identify the appropriate industry classification of each establishment that generates or reclaims materials excluded under this paragraph (g). An “establishment” for the purpose of this paragraph is an economic unit, generally at a single physical location, where business is conducted or where services or industrial operations are performed. An establishment is the smallest such unit for which records provide information on the cost of resources, materials, labor and capital employed to produce the units of output.

(iv) Facilities comprised solely of establishments engaged in waste management services are in industries not eligible for this exclusion. This includes facilities with establishments classified under NAICS Codes 5621, 5622, or 5629, and any other facility that reclaims secondary materials received from off-site generators, and that does not produce any products made from non-secondary materials. Hazardous secondary materials sent to these facilities are not considered to be generated and reclaimed in a continuous process within the same industry.

(v) If, using the guidelines in Appendix X of this Part, it is not clear whether a reclamation unit, process, or activity is part of the same industry in which the material was generated, then the generation and reclamation of these materials will be presumed to occur within the same industry, provided that the reclamation unit, process, or activity is located on-site (as defined in § 260.10) with respect to the process that generated the material.

Option 2 for Paragraph (g)(2)

(2) For the purposes of this paragraph:

(i) Both the generation and reclamation of the hazardous secondary materials must occur within a single industry listed in Appendix X of this Subpart. Such reclamation may involve one or more processing steps, provided that all steps take place within the same industry in which the secondary material was generated, and that such reclamation produces a product or ingredient that is used or reused without further reclamation. Reclamation steps need not take place at the site where the material was generated, provided such reclamation activities take place within the generating industry.