

Revision Checklists 192 A and B Summary

Rule Title:	Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived-From Rules
Checklist Title:	A. Mixture and Derived-From Rules Revisions B. Land Disposal Restrictions Correction
Reference:	66 <u>FR</u> 27266-27297
Promulgation Date:	May 16, 2001
Effective Date:	August 14, 2001
Cluster:	RCRA Cluster XI
Provision Type:	HSWA/Non-HSWA
Linkage:	Checklist 192 A: Revision Checklists 117A and 117B Checklist 192 B: Revision Checklist 187
Optional:	Checklist 192 A is optional Checklist 192 B is not optional

Summary: (A) This rule finalizes the retention of the mixture rule and the derived-from rule with two revisions. The first revision expands the exclusion for mixtures and/or derivatives of wastes listed solely for the ignitability, corrosivity and/or reactivity characteristic. The second revision is a new conditional exemption from the mixture and derived-from rules for mixed wastes.

(B) This rule also corrects an error made by the June 8, 2000 rule (65 FR 36365; Revision Checklist 187). The June 8, 2000 rule inadvertently removed the entry for hazardous waste code U048 from 40 CFR part 268, Appendix VII. Revision Checklist 192 B reinserts the entry for U048.

State Authorization: This rule is placed in RCRA Cluster XI. The State modification deadline is July 1, 2002 (or July 1, 2003 if a State statutory change is necessary).

The revisions to 40 CFR 261.3(g) and 261.3(h)(1)-(3) are promulgated pursuant to HSWA authorities. The HSWA revisions are considered less stringent than the existing Federal regulations. A State is not required to modify its program when EPA promulgates Federal regulations that are less stringent than the authorized State regulations. As such, optional revisions are not effective under HSWA in an authorized State until the State adopts and receives authorization for the changes. The revisions to 40 CFR 261.3(a)(2)(iii) and (iv), and 261.3(c)(2)(i) are promulgated pursuant to non-HSWA authorities. The non-HSWA changes do not go into effect in an authorized State until the State adopts and receives authorization for the revisions. Both interim and final authorization are available for the HSWA provisions. Interim authorization expires January 1, 2003. Only final authorization is available for the non-HSWA provisions.

This rule also contains a revision to 40 CFR 268, Appendix VII that is considered more stringent than the existing Federal regulations. An authorized State is required to adopt Federal regulations that are more stringent than the authorized State regulations. This required HSWA revision to 40 CFR 268, Appendix VII takes effect in an authorized State on the Federal effective date. Both interim and final authorization are available. Interim authorization expires January 1, 2003.

The State Revision Application must include applicable statutes and regulations, Revision Checklists 192 A and/or B, and other application materials, i.e. a supplemental AG statement, a program description, and/or an MOA, as determined by the Regional office. Note that under 271.21(b), the Regional office is allowed flexibility to determine what specific documents must be included in an application. Also, under 40 CFR 271.21(d), the Regional office may require the submission of any additional application materials it deems necessary.

Attorney General's Statement Entry: The following entry should be placed at Subsection I (VV) in the Model Revision Attorney General's Statement:

VV. [OPTIONAL: This is a reduced requirement.] State statutes and regulations expand the exclusion from classification as hazardous to include mixtures and/or derivatives of wastes listed solely for ignitability, corrosivity and/or reactivity characteristics, and provide a conditional exemption from mixture and derived-from rules for mixed wastes as indicated in Revision Checklist 192 A.

Federal Authority: RCRA §§1006, 2002(a), and 3001-3005; 40 CFR 261.3(a)(2)(iv), (c)(2)(i), (g) and (h) as amended May 16, 2001 (66 FR 27266).

The entry at Subsection XXI (GG) in the Model Revision Attorney General's Statement should be replaced with the following revised entry:

GG. State statutes and regulations include corrections and clarifications to the land disposal restrictions as indicated in Revision Checklists 167 C, 179 and 192 B.

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 268.4(a)(2)(ii)&(iii), 268.40/Table, 268.40(e), 268.42(a), 268.45(a) intro, 268.45(d)(3)&(4), 268.48, 268 Appendices VII & VIII as amended May 26, 1998 (63 FR 28556), June 8, 1998 (63 FR 31266), May 11, 1999 (64 FR 25408), and May 16, 2001 (66 FR 27266).

Citation of Laws and Regulations; Date of Enactment and Adoption

Remarks of the Attorney General

Incorporation by Reference Guidance: There is no special guidance for States that incorporate by reference.