

Revision Checklist 194 Summary

Rule Title:	Correction to the Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived-From Rules
Checklist Title:	Mixture and Derived-From Rules Revision II
Reference:	66 <u>FR</u> 50332-50334
Promulgation Date:	October 3, 2001
Effective Date:	February 1, 2002 (see 66 <u>FR</u> 61053, December 3, 2001)
Cluster:	RCRA Cluster XII
Provision Type:	HSWA/Non-HSWA
Linkage:	192 A and 117A&B
Optional:	Yes, conditionally optional

Summary: This rule finalizes a clarifying revision to the May 16, 2001 (Revision Checklist 192A; 66 FR 27266) mixture rule. Specifically, the rule clarifies that mixtures of certain excluded wastes, commonly referred to as Bevill wastes, and listed hazardous wastes that are listed solely because they contain a characteristic of ignitability, corrosivity, and/or reactivity, are exempt once the characteristic has been removed. Only states that adopted the optional Revision Checklist 192 A should adopt this rule.

On December 3, 2001, EPA reopened the comment period for thirty days, and delayed the effective date of this rule by 60 days. The rule will be effective February 1, 2002, unless adverse comment is received.

State Authorization: This rule is placed in RCRA Cluster XII. The State modification deadline is July 1, 2003 (or July 1, 2004 if a State statutory change is necessary).

The revision to 40 CFR 261.3(g) is promulgated pursuant to HSWA authorities. The HSWA revision is 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. Both interim and final authorization are available for the HSWA provisions. Interim authorization expires January 1, 2003.

No new State authorities are needed to implement this rule. No revisions made by this rule create a direct requirement for changes in the State's Memorandum of Agreement with EPA. This rule also makes no revisions which require a change in the State's Program Description, except to address the expanded number of rules adopted by the State. This rule has been designated as minor or routine; therefore, States are not required to submit an Attorney General's (AG) statement, program description, and an MOA. The State Revision Application must include applicable regulations and, if required by the applicable Region, Revision Checklist 194. Note that under 40 CFR 271.21(d), the Regional office retains the ability to request an AG

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statement addendum, other associated checklists, a program description, and an MOA if necessary.

Attorney General Certification Guidance: Specific AG certification of statutory authority may not be required for this checklist as long as the AG has previously demonstrated authority for identification and listing of hazardous waste.

Program Description Guidance: A State seeking authorization for this checklist should determine whether the revisions impacts the program describe in the Program Description. Specifically, the State should determine the extent that the new waste listings will impact the size of the regulated community. The State should submit a Program Description revision that either (1) explains that the listed waste is not handled in the State, or (2) describes changes in the size of the regulated community. When describing changes to the scope of the program, the State should describe strategies and methods for identifying new members of the regulated community. When applicable, the State should provide an estimate of generators, transporters, and TSD facilities handling the newly listed wastes and an estimate of the quantity of newly regulated hazardous waste. The State should also describe any additional resources required to implement compliance monitoring and enforcement of newly regulated entities and activities associated with the newly listed hazardous wastes.

Incorporation by Reference Guidance: In the 2001 version of the CFR, 40 CFR 261.3(a)(2)(iv) is incorrect. States that incorporate by reference the 2001 version of the CFR should exclude 40 CFR 261.3(a)(2)(iv) from the incorporation and instead, adopt the version found at either 66 FR 27297 (Revision Checklist 192 A; May 16, 2001) or 66 FR 50333 (Revision Checklist 194; October 3, 2001).