

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 not optional, but certain provisions are optional. Checklist 192 B is not optional

Summary: (A) This rule finalizes the retention and revision of the mixture and derived-from rules as proposed on November 19, 1999 (64 FR 63382). The mixture and derived-from rules that are being finalized today include 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 radioactive mixed waste.

(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 to **261.3(h)** are considered less stringent than the existing Federal regulations. **(Note the preamble to 66 FR 27266 implied that the revisions to 261.3(g) were not required. At that time, this was correct because there were no wastes listed because they exhibited the TC. However with the listing of K176 (Revision Checklist 195, 66 FR 58258), this is no longer the case and States are required to adopt the 261.3(g) changes.)** 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

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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.

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 the mixture and derived-from rules and for the land disposal restrictions.

Program Description Guidance: A State seeking authorization for this checklist may not need to submit a revised Program Description if the current Program Description already addresses the mixture and derived-from rules and land disposal restrictions.

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