such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.


§ 261.2 Definition of solid waste.

(a)(1) A solid waste is any discarded material that is not excluded under § 261.4(a) or that is not excluded by a variance granted under §§260.30 and 260.31 or that is not excluded by a non-waste determination under §§260.30 and 260.34.

(2)(i) A discarded material is any material which is:

(A) Abandoned, as explained in paragraph (b) of this section; or
(B) Recycled, as explained in paragraph (c) of this section; or
(C) Considered inherently waste-like, as explained in paragraph (d) of this section; or
(D) A military munition identified as a solid waste in § 266.202.

(ii) A hazardous secondary material is not discarded if it is generated and reclaimed under the control of the generator as defined in §260.10, it is not speculatively accumulated as defined in §261.1(c)(8), it is handled only in non-land-based units and is contained in such units, it is generated and reclaimed within the United States and its territories, it is not otherwise subject to material-specific management conditions under §261.4(a) when reclaimed, it is not a spent lead acid battery (see §266.80 and §273.2), it does not meet the listing description for K171 or K172 in §261.32, and the reclamation of the material is legitimate, as specified under §260.43. (See also the notification requirements of §260.42). (For hazardous secondary materials managed in land-based units, see §261.4(a)(23)).

(b) Materials are solid waste if they are abandoned by being:

(1) Disposed of; or
(2) Burned or incinerated; or
(3) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(c) Materials are solid wastes if they are recycled—or accumulated, stored, or treated before recycling—as specified in paragraphs (c)(1) through (4) of this section.

(1) Used in a manner constituting disposal. (i) Materials noted with a “*” in Column 1 of Table 1 are solid wastes when they are:

(A) Applied to or placed on the land in a manner that constitutes disposal; or
(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).

(ii) However, commercial chemical products listed in §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(2) Burning for energy recovery. (i) Materials noted with a “*” in column 2 of Table 1 are solid wastes when they are:

(A) Burned to recover energy;
(B) Used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste).

(ii) However, commercial chemical products listed in §261.33 are not solid wastes if they are themselves fuels.

(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 when reclaimed unless they meet the requirements of §§261.2(a)(2)(i), or 261.4(a)(17), or 261.4(a)(23), or 261.4(a)(24) or 261.4(a)(25).

(4) Accumulated speculatively. Materials noted with a “*” in column 4 of Table 1 are solid wastes when accumulated speculatively.
(d) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:

1. Hazardous Waste Nos. F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028.

2. Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in subparts C or D of this part, except for brominated material that meets the following criteria:
   (i) The material must contain a bromine concentration of at least 45%; and
   (ii) The material may pose a substantial hazard to human health and the environment when recycled.

(e) Materials that are not solid waste when recycled. (1) Materials are not solid wastes when they can be shown to be recycled by being:
   (i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or
   (ii) Used or reused as effective substitutes for commercial products; or
   (iii) Returned to the original process (described in paragraphs (e)(1)(i) through (iii) of this section):

   1. Spent Materials
   2. Sludges (listed in 40 CFR Part 261.31 or 261.32)
   3. By-products (listed in 40 CFR 261.31 or 261.32)
   4. Scrap metal that is not excluded under § 261.4(a)(13)

   Note: The terms "spent materials," "sludges," "by-products," and "scrap metal" and "processed scrap metal" are defined in §261.1.
§ 261.3 Definition of hazardous waste.

(a) A solid waste, as defined in § 261.2, is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under § 261.4(b); and

(2) It meets any of the following criteria:

(i) It exhibits any of the characteristics of hazardous waste identified in subpart C of this part. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under § 261.4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under subpart C is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in Table I to § 261.24 that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

(ii) It is a mixture of solid waste and one or more hazardous wastes listed in subpart D of this part and has not been excluded from paragraph (a)(2) of this section under §§ 260.20 and 260.22, paragraph (g) of this section, or paragraph (h) of this section; however, the following mixtures of solid wastes and hazardous wastes listed in subpart D of this part are not hazardous wastes (except by application of paragraph (a)(2)(i) or (ii) of this section) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act (including wastewater at facilities which have eliminated the discharge of wastewater) and;

(A) One or more of the following spent solvents listed in § 261.31—benzene, carbon tetrachloride, tetrachloroethylene, trichloroethylene or the scrubber waters derived from the combustion of these solvents—Provided, That the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 1 part per million, OR the