

§ 260.32

classifying as a solid waste those materials that have been reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:

- (1) The degree of processing the material has undergone and the degree of further processing that is required;
- (2) The value of the material after it has been reclaimed;
- (3) The degree to which the reclaimed material is like an analogous raw material;
- (4) The extent to which an end market for the reclaimed material is guaranteed;
- (5) The extent to which the reclaimed material is handled to minimize loss;
- (6) Other relevant factors.

[50 FR 662, Jan. 4, 1985, as amended at 59 FR 48041, Sept. 19, 1994; 71 FR 16902, Apr. 4, 2006]

§ 260.32 Variances to be classified as a boiler.

In accordance with the standards and criteria in §260.10 (definition of “boiler”), and the procedures in §260.33, the Administrator may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in §260.10, after considering the following criteria:

- (a) The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and
- (b) The extent to which the combustion chamber and energy recovery equipment are of integral design; and
- (c) The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel; and
- (d) The extent to which exported energy is utilized; and
- (e) The extent to which the device is in common and customary use as a “boiler” functioning primarily to produce steam, heated fluids, or heated gases; and

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- (f) Other factors, as appropriate.

[50 FR 662, Jan. 4, 1985, as amended at 59 FR 48041, Sept. 19, 1994]

§ 260.33 Procedures for variances from classification as a solid waste or to be classified as a boiler.

The Administrator will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed controlled flame combustion devices as boilers:

(a) The applicant must apply to the Administrator for the variance. The application must address the relevant criteria contained in §260.31 or §260.32.

(b) The Administrator will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the recycler is located. The Administrator will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The Administrator will issue a final decision after receipt of comments and after the hearing (if any).

[59 FR 48041, Sept. 19, 1994]

§ 260.40 Additional regulation of certain hazardous waste recycling activities on a case-by-case basis.

(a) The Regional Administrator may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in §261.6(a)(2)(iv) of this chapter should be regulated under §261.6 (b) and (c) of this chapter. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the Regional Administrator will consider the following factors:

- (1) The types of materials accumulated or stored and the amounts accumulated or stored;
- (2) The method of accumulation or storage;