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2. Secondary Materials Used as Effective Substitutes for Commercial Products

Section 261.2(e)(1) excludes certain recycled secondary materials from the definition of solid waste. Section 261.2(e)(1)(ii) excludes materials which are recycled by being used or reused as effective substitutes for commercial products. Can a material that must be reclaimed prior to use or reuse as an effective substitute for a commercial product qualify for the exclusion in §2612(e)(1)(ii)?

No, this exclusion applies only to materials which are used or reused without prior reclamation. The January 4, 1985, Federal Register (50 FR 619) discusses this exclusion and states that "[w]hen secondary materials are directly used as substitutes for commercial products...these materials are functioning as raw materials...and, thus, are not wastes." A material that must be reclaimed prior to use (or reuse) as an effective substitute for a commercial product is not being directly used (or reused), and so would not qualify for this exclusion.