

**Emergency ICR Request for OMB Control Number 2050-0202  
(EPA ICR Number 2310.05)**

Emergency Amendment to the Information Collection for Revisions to The RCRA Definition of Solid Waste (Final Rule) OMB Control No. 2050-0202, EPA ICR No. 2310.05.

**Statutory Authority**

Sections 2002, 3001, 3002, 3003, 3004, 3006, 3010, and 3017 of the Solid Waste Disposal Act of 1965, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA).

**Justification and background for this emergency ICR**

In 2015, EPA issued a final rule that revised the RCRA Definition of Solid Waste. In that rule, EPA replaced the 2008 transfer-based exclusion found at 40 CFR 261.4(a)(24) and (25) with the verified recycler exclusion, found at 40 CFR 261.4(a)(24). The goal of the 2008 and 2015 rules was to exempt hazardous secondary materials sent to off-site recycling facilities from the definition of solid waste when certain conditions were met. These conditions included recordkeeping and reporting requirements. EPA also revised the definition of legitimate recycling found at 40 CFR 260.43, which was originally promulgated in 2008. In the 2008 and 2015 versions of the regulation, the legitimacy provision was designed to distinguish between real recycling activities—legitimate recycling—and sham recycling, an activity undertaken by an entity to avoid the requirements of managing a hazardous secondary material as a hazardous waste.

On July 7, 2017 and amended on March 6, 2018 the United States Court of Appeals for the District of Columbia Circuit: (1) vacated the 2015 verified recycler exclusion for hazardous waste that is recycled off-site (except for certain provisions); (2) reinstated the transfer-based exclusion from the 2008 rule to replace the now-vacated 2015 verified recycler exclusion; (3) upheld the containment and emergency preparedness provisions and the eligibility of spent petroleum catalysts for the reinstated transfer-based exclusion; (4) vacated factor 4 of the 2015 definition of legitimate recycling in its entirety; and (5) reinstated the 2008 version of factor 4 to replace the now-vacated 2015 version of factor 4.

The court issued the mandate for its decision on March 14, 2018, at which point the orders became effective. As a result, some of the recordkeeping and reporting requirements under this ICR no longer apply, while other requirements that had previously applied were reinstated.

## **Burden Changes**

The changes to the regulations due to the vacatur are expected to affect a total of 105 facilities, resulting in a total net burden reduction of 2,122 hours and \$26,132.21 per year, as described below.

### *Replacement of the 2015 Factor 4 in the definition of legitimate recycling with the 2008 Factor 4*

- Due to the vacatur of the 2015 Factor 4, facilities will no longer have to document legitimacy when Factor 4 is not met or submit notification.
- These changes are expected to affect 25 facilities, resulting in a total burden reduction of 257.75 hours and \$49,895.02 per year.

### *Replacement of the verified recycler exclusion with the modified transfer-based exclusion at 40 CFR 261.4(a)(24)*

- Due to the vacatur of the verified recycler exclusion, facilities that do not have a permit will not be required to obtain a variance.
- Due to the reinstatement of the transfer-based exclusion, generators that send their hazardous secondary materials to facilities that do not have a permit would be required to conduct a “reasonable efforts” environmental audit of the receiving facilities.
- These changes are expected to affect 36 generators and 9 reclamation facilities, resulting in a total burden reduction of 1,988.50 hours and a cost increase of \$15,509.46 per year.

### *Reinstatement of the export provisions for the transfer-based exclusion at 40 CFR 261.4(a)(25)*

- Due to the reinstatement of the transfer-based exclusion at 40 CFR, generators will now be able to export their hazardous secondary materials under the transfer-based exclusion if they provide notice and obtain consent of the receiving country, and file an annual report.
- These changes are expected to affect 35 exporters, resulting in a total burden increase of 123 hours and \$8,253.35 per year.