U.S. Environmental Protection Agency
Information Collection Request

Title: RCRA Definition of Solid Waste (Renewal)

OMB Control Number: 2050-0202

EPA ICR Number: 2310.08

Abstract: In 2008, 2015, and 2018, the U.S. Environmental Protection Agency (EPA) published revisions to the "definition of solid waste" (DSW) that exclude certain industrial hazardous secondary materials from regulation as "solid waste" and "hazardous waste" under Subtitle C of the Resource Conservation and Recovery Act (RCRA). Specifically, EPA amended 40 CFR Part 261 to provide that hazardous secondary materials reclaimed under the control of the generator are not solid wastes if specified conditions are met. EPA also amended Part 261 to provide that hazardous secondary materials that are generated and then transferred to another person for the purpose of reclamation are not solid waste, provided that specified conditions are met. Finally, EPA finalized other amendments to address particular issues, including standards in Part 260 to enable a person to apply to EPA for a formal determination that a material is not discarded and therefore not a solid waste and to codify the RCRA concept of "legitimate recycling".

The RCRA DSW exclusions are currently organized around six requirements:

Requirement 1: DSW off-site transfer-based exclusion;

Requirement 2: DSW generator-controlled exclusion;

Requirement 3: Solid waste variances and non-waste determinations

Requirement 4: DSW "remanufacturing" exclusion;

Requirement 5: Required recordkeeping for speculative accumulation.

Requirement 6: Export requirements

<u>Supporting Statement A</u>

1. NEED AND AUTHORITY FOR THE COLLECTION

Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

EPA promulgated the DSW regulations under the authority of Sections 2002, 3001, 3002, 3003, 3004, 3007, 3010, and 3017 of the Solid Waste Disposal Act of 1970, as amended by RCRA, and as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924. And codified in 40 CFR Parts 260, 261, and 265 as described in the table below.

CFR citation (40 CFR Part)	**Brief Description of Requirements**

260	For petitioners wishing to receive a formal determination that their material is not a solid waste, the following requirements apply: (1) facilities send notice to the Administrator and potentially re-apply for a variance in the event of a change in circumstances that affect how a hazardous secondary material meets the criteria upon which a variance or non-waste determination has been based; (2) establish a fixed term not to exceed ten years for variance and non-waste determinations, at the end of which facilities must re-apply for a variance or non-waste determination; (3) all the criteria for a partial reclamation variance must be met; and (4) petitioners demonstrate why they cannot meet, or should not have to meet, existing solid waste exclusions under 40 CFR 261.2 or 261.4. [Requirement 3 above]
261.1(c)(8)	Requires owners and operators subject to the speculative accumulation requirements to label the storage unit indicating the date the accumulation of material began. [Requirement 5 above]
261.4(a)(23)	Requires the tolling contractor to maintain at its facility for no less than three years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer, and the tolling manufacturer must maintain at its facility for no less than three years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. [Requirement 2 above]
261.4(a)(25)	Requires generators that export their hazardous waste secondary materials under the transfer-based exclusion to provide notice and obtain consent of the receiving country, and file an annual report. [Requirement 6 above]
261.4(a)(27)	Requires hazardous secondary material generators and the remanufacturer to maintain records of shipments and confirmations of receipts for a period of three years from the dates of the shipments. [Requirement 4 above]
265	Requires generators that send their hazardous secondary materials to facilities that do not have a permit to conduct a "reasonable efforts" environmental audit of the receiving facilities. EPA requires generators to follow certain emergency preparedness and response regulations as a condition of the transfer-based exclusion. Generators that accumulate less than 6,000 kilograms (kg) of hazardous secondary material on site must comply with the emergency preparedness and response requirements in 40 CFR Part 265, Subpart C, while generators accumulating more than 6,000 kg of hazardous secondary material on site must comply with 40 CFR Part 265, Subparts C

	and D. These emergency preparedness and response conditions include recordkeeping requirements for personnel training, as well as recordkeeping and reporting requirements for contingency planning and emergency procedures. [Requirement 1 above]

2. PRACTICAL UTILITY/USERS OF THE DATA

Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

Requirement 1: Off-Site Transfer Based Exclusion for Hazardous Secondary Material

Generators that send their hazardous secondary materials to facilities that do not have a permit are required to conduct a "reasonable efforts" environmental audit of the receiving facilities. This information will be made available upon request by a regulatory authority to ensure generators conducted a creditable audit of the receiving facility. The emergency preparedness and response conditions include recordkeeping requirements for personnel training. This information will be used by both EPA and generators to determine whether employees have acquired the necessary expertise to perform their jobs. EPA also needs this information to review personnel records to determine whether employees are receiving a level of training that is commensurate with their duties and responsibilities as well as their ability to respond to any emergency situations at the facility. In addition, the contingency plans may be reviewed by EPA inspectors to determine whether generators have developed adequate procedures to respond to unplanned sudden or non-sudden releases of hazardous waste or hazardous constituents to air, soil, or surface water. EPA also has financial assurance requirements as a condition of exclusion. The associated paperwork requirements will be used by EPA to ensure owners/operators use a financial mechanism.

Requirement 2: Hazardous Secondary Material Generated and Reclaimed under the Control of the Generator

EPA has certification requirements for certain materials that are generated and reclaimed under the control of the generator (i.e., within the same company and under certain tolling arrangements) because of existing complexities in corporate ownership and liability. The certification will be used to hold the company accountable for knowing and complying with the definition of "hazardous secondary materials generated and reclaimed under the control of the generator" and to enable regulatory authorities to determine when facilities are eligible for this exclusion. The certification also will be used by the generator to increase the company's awareness and accountability for ensuring that the generator and reclamation facilities are in fact under its ownership. The emergency preparedness and response conditions include recordkeeping requirements for personnel training. This information will be used by both EPA and generators to determine whether employees have acquired the necessary expertise to perform their jobs. EPA also needs this information to review personnel records to determine whether employees are receiving a level of training that is commensurate with their duties and responsibilities as well as their ability to respond to any emergency situations at the facility. In addition, the contingency plans may be reviewed by EPA inspectors to determine whether generators have developed adequate procedures to respond to unplanned sudden or non-sudden releases of hazardous waste or hazardous constituents to air, soil, or surface water.

Requirement 3: Solid Waste Variances and Non-Waste Determinations

The non-waste determination and solid waste variance petition process provides petitioners with an administrative procedure for receiving a formal determination that their material is not a solid waste. For cases where there is ambiguity about whether a secondary material is a solid waste, this process may provide regulatory certainty for both the facility and Agency. The non-waste determination and variance requirements in 40 CFR Part 260 will foster greater consistency on the part of implementing agencies and help ensure the protectiveness of the implementation of the solid waste variances and non-waste determinations.

Requirement 4: Remanufacturing Exclusion

Under the remanufacturing exclusion at 40 CFR 261.4(a)(27), both the hazardous secondary material generator and the remanufacturer must maintain records of shipments and confirmations of receipts for a period of three years from the dates of the shipments. Regulatory authorities need such recordkeeping requirements to ensure that hazardous secondary materials are being transferred to their intended destinations in accordance with the exclusions.

Requirement 5: Recordkeeping and Labeling for Speculative Accumulation

Persons subject to the speculative accumulation requirements (including but not limited to persons operating under the generator-controlled exclusions of 40 CFR 261.4(a)(23)) must place a label on the storage unit indicating the first date that the excluded hazardous secondary material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method. Inspectors and other regulatory authorities will use this information to quickly ascertain how long a facility has been storing an excluded hazardous secondary material, and, therefore, whether that facility was in compliance with storage time limits.

Requirement 6: Recordkeeping for Export under the Transfer-Based Exclusion

Generators can export their hazardous waste secondary materials under the transfer-based exclusion if they provide notice and obtain consent of the receiving country, and file an annual report. Such procedures help ensure, for example, that the materials will not be discarded and give the receiving country an opportunity to respond to the intended shipment (e.g., request additional information).

3. USE OF TECHNOLOGY

Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The information collected, as described above, can be kept in an electronic format.

4. EFFORTS TO IDENTIFY DUPLICATION

Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

None of the information required by this ICR will duplicate information required by existing RCRA regulations.

5. MINIMIZING BURDEN ON SMALL BUSINESSES AND SMALL ENTITIES

If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

The exclusions in this ICR are voluntary and deregulatory. As such, there is no adverse burden impact to large or small entities.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION

Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

EPA is confident that the activities required of respondents are necessary, and to the extent possible, the Agency has attempted to minimize the burden imposed. In addition, other requirements can be satisfied by activities already being undertaken by respondents. If the minimum information collection requirements are not met, EPA will not be able to ensure that the hazardous secondary materials are being properly managed and do not pose a threat to human health and the environment.

7. GENERAL GUIDELINES

Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

The information collection is consistent with the guidelines set forth in 5 CFR 1320(d)(2) of the Paperwork Reduction Act.

8. PUBLIC COMMENT AND CONSULTATIONS

8a. Public Comment

If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the Agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the Agency in response to these comments. Specifically address comments received on cost and hour burden.

In compliance with the Paperwork Reduction Act of 1995, EPA issued a public notice in the *Federal Register* on December 11, 2025 (90 *FR* 57464). The notice indicated that EPA was planning to submit an ICR, "Revisions to the RCRA Definition of Solid Waste," EPA ICR number 2310.08, OMB Control No. 2050-0202 to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. The notice also requested comments on the information collection and burden estimates covered in the ICR. The public comment period extended through February 9, 2026. EPA received two comments on this ICR in response to the *Federal Register* notice. The comments are attached to this supporting statement.

The commenters felt that collecting information from companies to prove they qualify for exemptions from regulatory requirements is unnecessary. EPA appreciates the issues raised by the commenters, however the paperwork requirements that are covered in this ICR are codified in the CFR and would take a regulatory change. In light of this, the commenters are encouraged to petition the Agency for a regulatory change. Section 7004 of RCRA states that any person may petition EPA for the promulgation, amendment, or repeal of any regulation under RCRA. EPA promulgated regulations pursuant to §7004 that outline the procedures for filing this type of petition. According to §260.20, each petition must include:

• The petitioner's name and address

• A statement of the petitioner's interest in the proposed action

• A description of the proposed action, and

• A statement of the need and justification for the proposed action (including any supporting tests, studies, or other information).

Upon submission, EPA reviews the petition and publishes a tentative decision in the Federal Register to grant or deny it. After a public comment period, EPA evaluates all timely comments and publishes the final decision in the Federal Register.

8b. Consultations

Describe efforts to consult with persons outside the Agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

In January 2026, EPA contacted a number of hazardous secondary materials generators about the burden estimates in this ICR. Companies contacted were Carpenter Technology Corp, Consolidated Packaging Group Inc., V&S Lebanon Galvanizing LLC, Aleris Rolled Products, and CCL Label Inc. No changes to the burden estimates were made as a result of these consultations.

9. PAYMENTS OR GIFTS TO RESPONDENTS

Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

There are no payments or gifts associated with this collection of information.

10. ASSURANCE OF CONFIDENTIALITY

Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or Agency policy. If the collection requires a systems of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.

Participation under the exclusions is voluntary. EPA does not expect to deem any information collected under the rule to be CBI (Confidential Business Information). If such a claim were asserted, EPA must and will treat the information in accordance with the applicable regulations (e.g., 40 CFR Part 2, Subpart B). EPA also will assure that this information collection complies with the Privacy Act of 1974 and OMB Circular 108.

11. JUSTIFICATION FOR SENSITIVE QUESTIONS

Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the Agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The information collection activities covered by this ICR will not include questions about sensitive issues.

12. RESPONDENT BURDEN HOURS & LABOR COSTS

Provide estimates of the hour burden of the collection of information. The statement should:

- *Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Generally, estimates should not include burden hours for customary and usual business practices.*
- *If this request for approval covers more than one form, provide separate hour burden estimates for each form and the aggregate the hour burdens.*
- *Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included as O&M costs under non-labor costs covered under question 13.*

12a. Respondents/NAICS Codes

Entities potentially affected by the information collection requirements covered in this ICR include facilities in industry sectors that generate or recycle hazardous secondary materials that are excluded under RCRA DSW or excluded from RCRA Subtitle C under other solid waste exclusions or variances. The following is a list of North American Industry Classification System (NAICS) codes associated with industries most likely affected by the paperwork requirements covered in this ICR.

Industry Sector	NAICS Codes
Agriculture, Forestry, Fishing and Hunting	11
Mining	21
Utilities	22
Construction	23
Manufacturing	31
Manufacturing	32
Manufacturing	33
Wholesale Trade	42
Retail Trade	44, 45
Transportation	48, 49
Information	51

Industry Sector	NAICS Codes
Finance and Insurance	52
Real Estate, Rental, Leasing	53
Professional, Scientific & Technical Services	54
Management of Companies and Enterprises	55
Administrative Support, Waste Management & Remediation	56
Educational Services	61
Health Care & Social Assistance	62
Arts, Entertainment, Recreation	71
Accommodation and Food Services	72
Other Services	81
Public Administration	92

12b. Information Requested

Requirement 1: Off-Site Transfer Based Exclusion for Hazardous Secondary Material

The transfer-based exclusion requires facilities to maintain emergency preparedness and response conditions, financial assurance, and maintenance of records of hazardous secondary material shipments and confirmation of receipts for three years.

i. **Emergency Preparedness and Response**

- Personnel training records should include job titles for each position and the name of each person filling each job, a written job description and necessary qualifications for each position, and the training given to the individual filling that position
- Contingency plans should include a description of response actions, a description of the arrangements agreed to by local police authorities, contact lists for emergency coordinators, a list of emergency equipment, and an evacuation plan for the facility personnel
- Documentation of whether State or local authorities decline to enter into agreement to become more familiar with the generator's facility and its waste
- Notification to fire department of imminent or actual emergency situation
- Emergency report to the on-scene coordinator (OSC) or National Response Center (NRC), including:
  - Name and telephone number of reporter;
  - Name and address of facility;

- Time and type of incident;
- Name and quantity of material(s) involved;
- The extent of injuries; and
- Possible hazards to human health or the environment outside the facility

ii. Reasonable Efforts

- Documentation and certification that is available upon request by a regulatory authority within 72 hours, or within a longer period of time as specified by the regulatory authority

iii. Financial Assurance

An owner or operator of a reclamation or intermediate facility must have financial assurance as a condition of the exclusion, choosing from the options as specified in 40 CFR 261.143(a) through (e): trust fund, surety bond guaranteeing payment into a trust fund, letter of credit, insurance, and financial test and corporate guarantee.

Trust Fund

- An originally signed duplicate of a trust agreement whose wording is identical to the wording specified in 40 CFR 261.151(a)(1).
- A formal certification of acknowledgment, as required under 40 CFR 261.143(a)(2).
- Update of Schedule A of the trust agreement, as required under 40 CFR 261.143(a)(2).
- A written request under 40 CFR 261.143(a)(5) to the Regional Administrator for release of the amount in excess of the current cost estimate, if the value of the trust fund is greater than the total amount of the current cost estimate.
- A written request under 40 CFR 261.143(a)(6) to the Regional Administrator for release of the amount in excess of the current cost estimate covered by the trust fund, if the owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund.
- A request for reimbursements under 40 CFR 261.143(a)(7) for partial or final closure expenditures, including itemized bills, to the Regional Administrator.

Surety Bond Guaranteeing Payment into a Trust Fund

- A surety bond whose wording is identical to the wording specified in 40 CFR 261.151(b).
- Evidence of an increase in the penal sum or other financial assurance as specified to cover the increase, whenever the current cost estimate increases to an amount greater than the penal sum, as provided under 40 CFR 261.143(b)(7).
- Notice of bond cancellation, as provided under 40 CFR 261.143(b)(8).

Letter of Credit

- Irrevocable standby letter of credit whose wording is identical to the wording specified in 40 CFR 261.151(c).
- Letter from the owner or operator under 40 CFR 261.143(c)(4), referring to the letter of credit by number, issuing institution, and date, and providing the following information: The EPA Identification Number (if any issued), name, and address of the facility, and the amount of funds assured for the facility by the letter of credit.
- A letter from the issuing institution under 40 CFR 261.143(c)(5), notifying both the owner or operator and the Regional Administrator by certified mail of a decision not to extend the expiration date.
- Evidence of an increase in the credit or other financial assurance as specified to cover the increase, whenever the current cost estimate increases to an amount greater than the amount of the credit, as provided under 40 CFR 261.143(c)(7).

Insurance

- A certificate of insurance whose wording is identical to the wording specified in 40 CFR 261.151(d).
- A request for reimbursements for expenditures to EPA, including itemized bills, as specified under 40 CFR 261.143(d)(5).
- A notice sent by certified mail from the insurer that it has elected to cancel, terminate, or fail to renew the policy, as specified under 40 CFR 261.143(d)(8).
- Evidence of an increase in the credit or other financial assurance as specified to cover the increase, whenever the current cost estimate increases to an amount greater than the face amount of the policy, as specified under 40 CFR 261.143(d)(9).

Financial Test and Corporate Guarantee

- Information required under 40 CFR 261.143(e)(3):
  - A letter signed by the owner's or operator's chief financial officer and worded as specified in 40 CFR 261.151(e).
  - A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year.
  - A special report from the owner’s or operator’s independent certified public accountant to the owner or operator, if required. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer’s letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of the comparison, and the reasons for any differences.
- A letter as required under 40 CFR 261.143(e)(4) from the owner/operator’s chief financial officer that:

- Requests the extension;
- Certifies that he has grounds to believe that the owner or operator meets the criteria of the financial test;
- Specifies for each facility to be covered by the test the EPA Identification Number (if any issued), name, address, and current cost estimates to be covered by the test;
- Specifies the date ending the owner's or operator's last complete fiscal year before the effective date of these regulations;
- Specifies the date, no later than 90 days after the end of such fiscal year, when he will submit the documents specified in paragraph (e)(3) of this section; and
- Certifies that the year-end financial statements of the owner or operator for such fiscal year will be audited by an independent certified public accountant.

- Annual update of information as required under 40 CFR 261.143(e)(5), after the initial submission of these items.
- Notice as required under 40 CFR 261.143(e)(6) from the owner/operator to the Regional Administrator of intent to establish alternate financial assurance as specified in this section.
- Reports as required under 40 CFR 261.143(e)(7) of financial condition from the owner or operator in addition to those specified in paragraph (e)(3) of this section, if requested by the Regional Administrator.
- A guarantee whose wording is identical to the wording specified in 40 CFR 261.151(g)(1). A certified copy of the guarantee must accompany the items sent to the Regional Administrator. The terms of the guarantee must address the criteria specified in 40 CFR 261.143(e)(10)(i)-(iii).
- A letter under 40 CFR 261.143(e)(10) from the guarantor's chief financial officer. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter must describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship'' with the owner or operator, this letter must describe this "substantial business relationship'' and the value received in consideration of the guarantee.

iv. Receipt Confirmations

- Records of shipments and confirmation of receipts

Requirement 2: Hazardous Secondary Material Generated and Reclaimed under the Control of the Generator

i. Recordkeeping Requirement for Tolling Arrangements

- Routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations) or new records that contain:
  - The name of the transporter;
  - The date of the shipment; and
  - The type and quantity of the hazardous secondary material shipped or received pursuant to the written contract.

ii. Emergency Preparedness and Response

- Personnel training records should include job titles for each position and the name of each person filling each job, a written job description and necessary qualifications for each position, and the training given to the individual filling that position
- Contingency plans should include a description of response actions, a description of the arrangements agreed to by local police authorities, contact lists for emergency coordinators, a list of emergency equipment, and an evacuation plan for the facility personnel
- Documentation of whether State or local authorities decline to enter into agreement to become more familiar with the generator's facility and its waste
- Notification to fire department of imminent or actual emergency situation
- Emergency report to the OSC or NRC, including:
  - Name and telephone number of reporter;
  - Name and address of facility;
  - Time and type of incident;
  - Name and quantity of material(s) involved;
  - The extent of injuries; and
  - Possible hazards to human health or the environment outside the facility

iii. Certifications

- For generators generating and reclaiming within the same company, a certification from the generator stating one of the following:
  - "On behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], which is controlled by [insert generator facility name] and that [insert the name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material;" or
  - "On behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], that both facilities are under common control, and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material."
- For generators generating and reclaiming under a tolling arrangement, a certification from the tolling contractor stating the following: "On behalf of [insert tolling contractor name], I certify that [insert tolling contractor name] has a written contract with [insert toll manufacturer name] to manufacture [insert name of product or intermediate] which is made from specified unused materials, and that [insert tolling contractor name] will reclaim the hazardous secondary materials generated during this manufacture. On behalf of [insert tolling contractor name], I also certify that [insert tolling contractor name] retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process."

Requirement 3: Solid Waste Variances and Non-Waste Determinations

i. Variances from Classification as a Solid Waste

Under current 40 CFR 260.31, the Regional Administrator may grant a request for a variance from classification of a solid waste for (1) materials that are accumulated speculatively if sufficient amounts of the material will be recycled or transferred for recycling in the following year (§ 260.31(a)); (2) for materials that are reclaimed and then reused as feedstock within the original production process (§ 260.31(b)); and (3) for materials that have been reclaimed but must be reclaimed further if the resulting partially-reclaiming material is commodity-like ("partial reclamation variance") (§ 260.31(c)).

- Application under section 260.31(c) for partial reclamation variance:
  - Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;
  - Whether the partially-reclaimed material has sufficient economic value that it will be purchased for further reclamation;
  - Whether the partially-reclaimed material is a viable substitute for a product or intermediate, produced from virgin or raw materials, which is used in subsequent production steps;
  - Whether there is a market for the partially-reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading); and
  - Whether the partially-reclaimed material is handled to minimize loss.

ii. Non-Waste Determinations under 40 CFR 260.34

Under current 40 CFR 260.30, persons may apply for a non-waste determination in order to receive a formal determination that their hazardous secondary materials are not discarded and, therefore, are not solid wastes when legitimately reclaimed. There are two types of non-waste determinations: (1) a determination for hazardous secondary materials reclaimed in a continuous industrial process; and (2) a determination for hazardous secondary materials indistinguishable in all relevant aspects from a product or intermediate. Each non-waste determination is based on a set of criteria that is codified in 40 CFR 260.34.

- Application under section 260.34(b) for a non-waste determination for hazardous secondary material which is reclaimed in a continuous industrial process. The application must demonstrate that the material is a part of the production process and is not discarded and address the EPA criteria.

- Application under section 260.34(c) for a non-waste determination for hazardous secondary material which is indistinguishable in all relevant aspects from a product or intermediate. The application must demonstrate that the hazardous secondary material is comparable to a product or intermediate and is not discarded, and address the EPA criteria.

Requirement 4: Remanufacturing Exclusion

EPA requires that all of the following conditions will need to be satisfied for eligibility under a remanufacturing exclusion:

- Remanufacturing plan including:
  - Name, address and EPA ID number of the generator(s) and the remanufacturer(s)
  - Types and expected annual volumes of solvents to be remanufactured;
  - The processes and industry sectors that generate the solvents;
  - The specific uses and industry sectors for the remanufactured solvents; and
  - Certification from the remanufacturer
- Records of shipments and confirmation of receipts
- Management in tanks and containers
  - Prior to remanufacturing, includes labels on the tanks and containers or a record of the material being stored
- No speculative accumulation
  - See requirements prohibiting speculative accumulation per 40 CFR 261.1(c)(8)
- Petition to add other chemicals, industries, and/or chemical functions to the remanufacturing exclusion (includes a waste characterization test)

Requirement 5: Recordkeeping for Speculative Accumulation

- Label on the storage unit indicating the first date that the excluded hazardous secondary material began to be accumulated; or
- Inventory log to demonstrate that at least 75% by weight or volume of material being recycled is transferred to a different site for recycling in a calendar year.

Requirement 6: Recordkeeping for Export under the Transfer-Based Exclusion

Generators are able to export their hazardous waste secondary materials under the transfer-based exclusion if they provide notice and obtain consent of the receiving country, and file an annual report.

- Keep copies of notifications and Acknowledgments of Consent to Export for a period of three years following receipt of the Acknowledgment.

12c. Respondent Activities

Requirement 1: Off-Site Transfer Based Exclusion for Hazardous Secondary Material

i. **Emergency Preparedness and Response**

- Collect and maintain the personnel training records as described above
- Under contingency planning requirements, generators must:
  - Collect data required in contingency plan;
  - Document whether authorities decline arrangement;
  - Write contingency plan;
  - Maintain contingency plan;
  - Submit contingency plan to relevant emergency centers; and
  - Amend contingency plan, when appropriate
- Under emergency procedure requirements, generators accumulating less than 6,000 kg of hazardous secondary material must:

    - Observe scene of hazardous waste discharge;
    - Report by phone requested data for NRC;
    - Document that local officials declines to enter into arrangements for coordinating response; and
    - Providing post-emergency information by phone
- Under emergency procedure requirements, generators accumulating more than 6,000 kg of hazardous secondary material must:
    - Collect information required in emergency report;
    - Write emergency report; and
    - Call OSC or notify NRC; notify local authorities if advisable

ii. Reasonable Efforts

- Conduct reasonable efforts for intermediate facilities and reclaimers and prepare certification statement using outside vendor
- Maintain for a minimum of three years documentation and certification that reasonable efforts were made as specified

iii. Financial Assurance

Trust Fund

- The owner/operator must perform the following activities:
    - Prepare and submit an originally signed duplicate of the trust agreement and formal certification of acknowledgement to EPA.
    - Update Schedule A of the trust agreement, as specified.
    - Whenever the current cost estimate changes:
        - Compare the new estimate with the trustee's most recent annual valuation of the trust fund; and
        - If the value of the fund is less than the amount of the new estimate, obtain other financial assurance to cover the difference, unless a deposit has been made as specified.
    - If the value of the trust fund is greater than the total amount of the current cost estimate, submit a written request to the Regional Administrator for release of the amount in excess of the current cost estimate.
    - If the owner or operator substitutes other financial assurance as specified in this section for all or part of the trust fund, submit a written request to the Regional Administrator for release of the amount in excess of the current cost estimate covered by the trust fund.
    - Submit a request for reimbursements, if applicable.
- The grantor (owner/operator) and trustee must comply with the terms of the trust agreement.

Surety Bond Guaranteeing Payment into a Trust Fund

- The owner/operator must perform the following activities:
  - Prepare and submit the surety bond to EPA.
  - Whenever the current cost estimate increases to an amount greater than the penal sum, submit evidence of the increase in the penal sum to the Regional Administrator or obtain other financial assurance to cover the increase.
  - Obtain alternate financial assurance and obtain EPA approval if required because of cancellation of the bond.
- The surety company may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Regional Administrator.
- The owner or operator and surety company must comply with the terms of the surety bond.

<u>Letter of Credit</u>

- The owner/operator must perform the following activities:
  - Prepare and submit letter of credit and letter referring to the letter of credit to the Regional Administrator.
  - Whenever the current cost estimate increases to an amount greater than the amount of the credit, submit evidence to the Regional Administrator of an increase in the credit or obtain other financial assurance as specified to cover the increase.
  - Obtain alternate financial assurance and obtain EPA approval if required because of termination of credit.
- The issuing institution may send a notice of a decision not to extend the expiration date of the credit by certified mail to the owner or operator and to the Regional Administrator.
- The owner/operator and issuing institution must comply with the terms of the letter of credit.

<u>Insurance</u>

- The owner/operator must perform the following activities:
  - Prepare and submit a certificate of insurance to the Regional Administrator.
  - Request reimbursements for expenditures by submitting itemized bills to the Regional Administrator, if applicable.
  - Whenever the current cost estimate increases to an amount greater than the face value of the policy, submit evidence to the Regional Administrator of an increase in the policy or obtain other financial assurance as specified to cover the increase.
  - Obtain alternate financial assurance and obtain EPA approval if required because of cancellation, termination, or failure to renew the insurance.
- The insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the Regional Administrator.
- The owner/operator and insurer must comply with the terms of the certificate of insurance.

Financial Test and Corporate Guarantee

- The owner/operator must perform the following activities:
  - Prepare and submit to EPA a signed letter, copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements, a special report from the owner's or operator's independent certified public accountant if applicable, and a guarantee if applicable.
  - To obtain an extension of the time allowed for submission of the documents specified in 40 CFR 261.143(e)(3), prepare and send a letter to the Regional Administrator of each Region in which the owner's or operator's facilities to be covered by the financial test are located.
  - Prepare and submit updated information to EPA under 40 CFR 261.143(e)(5), at the close of each fiscal year, as specified.
  - Prepare and submit a notice to EPA by certified mail of intent to establish alternate financial assurance.
  - Prepare and submit reports of financial condition, if requested by the Regional Administrator.
  - Obtain alternate financial assurance and obtain EPA approval if required because the financial tests are no longer met or disallowed by EPA.
  - Comply with the terms in the letter from the chief financial officer and guarantee.

iv.Receipt Confirmations

- Maintain records of shipments and confirmations of receipts for a period of three years from the dates of the shipments

Requirement 2: Hazardous Secondary Material Generated and Reclaimed under the Control of the Generator

i. Recordkeeping Requirement for Tolling Arrangements

- Prepare and maintain at the tolling contractor facility, for no less than three years, records of all hazardous secondary materials received pursuant to the written contract with the tolling manufacturer
- Prepare and maintain at the tolling manufacturer facility, for no less than three years, records of all hazardous secondary materials shipped pursuant to its written contract with the tolling contractor

ii. Emergency Preparedness and Response

- Collect and maintain the personnel training records as described above
- Under contingency planning requirements, generators must:
  - Collect data required in contingency plan;
  - Document whether authorities decline arrangement;
  - Write contingency plan;
  - Maintain contingency plan;
  - Submit contingency plan to relevant emergency centers; and

- Amend contingency plan, when appropriate

- Under emergency procedure requirements, generators accumulating less than 6,000 kg of hazardous secondary material must:
  - Observe scene of hazardous waste discharge;
  - Report by phone requested data for NRC;
  - Document that local officials declines to enter into arrangements for coordinating response; and
  - Providing post-emergency information by phone

- Under emergency procedure requirements, generators accumulating more than 6,000 kg of hazardous secondary material must:
  - Collect information required in emergency report;
  - Write emergency report; and
  - Call OSC or notify NRC; notify local authorities if advisable

iii. Certifications

- The generator or tolling contractor must prepare the certification

Requirement 3: Solid Waste Variances and Non-Waste Determinations

i. Variances from Classification as a Solid Waste

- Notify the Administrator in the event of a change in circumstances that affects how a hazardous secondary material meets the relevant criteria upon which a variance or non-waste determination has been based
- Re-apply for a variance at least every ten years
- Review and ensure that all revised factors for partial reclamation variance are met

ii. Non-Waste Determinations under 40 CFR 260.34

- Prepare and submit applications under sections 260.34(b) and (c)
- For facilities applying for a non-waste determination, explain or demonstrate why they cannot meet, or should not have to meet, the existing DSW exclusions under §§ 261.2 or 261.4
- For facilities receiving non-waste determinations, re-notify EPA or the State Director, if the state is authorized for this aspect of the rule, every two years by March 1 of each even-numbered year

Requirement 4: Remanufacturing Exclusion

- Both the hazardous secondary material generator and the remanufacturer will have to:
  - Notify EPA or the State Director, if the state is authorized for the program, and update the notification every two years per 40 CFR 260.42;
  - Develop and maintain a remanufacturing plan;
  - Maintain records of shipments and confirmations of receipts for a period of three years from the dates of the shipments;

- Prior to remanufacturing, store the hazardous spent solvents in tanks or containers that meet technical standards that would be the same as those found in 40 CFR part 264 subparts I and J, with the tanks and containers being labeled or otherwise having an immediately available record of the material being stored. During remanufacturing, and during storage of the hazardous secondary materials prior to remanufacturing, ensure that there is effective control of hazardous air emissions by complying with all applicable NESHAP standards, and with the requirements of 40 CFR part 264 or 265 subparts AA, BB, CC. This activity would be covered under existing EPA ICRs 1572: Hazardous Waste Specific Unit Requirements and Special Waste Processes and Types, 820: Hazardous Waste Generator Standards and 1593: Air Emission Standards for Tanks, Surface Impoundment and Containers; and
- Meet the requirements prohibiting speculative accumulation per 40 CFR 261.1(c)(8)

- Petition process:
    - Prepare and submit a petition for adding to the eligibility criteria (e.g., adding industries, adding chemicals) of the exclusion

Requirement 5: Recordkeeping for Speculative Accumulation

- Label and perform any recordkeeping to document speculative accumulation limits are being met.

Requirement 6: Recordkeeping for Export under the Transfer-Based Exclusion

- Submit a complete notification to EPA at least sixty days before the initial shipment is intended to be shipped offsite. This notification may cover export activities extending over a twelve month or lesser period.
- Submit a renotification when specified conditions on the notification change as applicable.
- Re-notify EPA if a shipment cannot be delivered for any reason to the reclaimer, intermediate facility or the alternate reclaimer or alternate intermediate facility.
- Keep copies of notifications and Acknowledgments of Consent to Export for a period of three years following receipt of the Acknowledgment.

12d. Respondent Burden Hours and Labor Costs

Exhibit 1 attached provides estimates of the respondent hourly burden associated with the RCRA DSW exclusion paperwork requirements covered in this ICR. Exhibit 1 includes burden hours (total and by labor type) per respondent, as well as the overall burden hours for all respondents.

Requirement 1: DSW off-site transfer-based exclusion

EPA estimates that 160 generators will be eligible for the transfer-based exclusion during the period covered by this ICR.

Requirement 2: DSW generator-controlled exclusion

EPA estimates that 192 generators will utilize DSW exclusion for generator-controlled recycling during the period covered by this ICR.

Requirement 3: Solid waste variances and non-waste determinations

EPA estimates that 33 generators will apply for variances and non-waste determinations during the period covered by this ICR.

Requirement 4: DSW "remanufacturing" exclusion

EPA estimates that one generator will utilize the remanufacturing exclusion during the period covered by this ICR.

Requirement 5: Required recordkeeping for speculative accumulation

EPA estimates that the 4,300 facilities eligible for pre-2008 DSW recycling exclusions will be required to label containers in satellite and accumulation areas during the period covered by this ICR.

Requirement 6: Export requirements

EPA estimates that 9 exporters will complete a notification to EPA prior to shipment, keep copies of notifications and Acknowledgements of Consent to Export, and submit an annual report.

Labor Costs

The hourly labor wage rates used to estimate costs to respondents were calculated as shown in the Table 1 below. The unloaded average hourly wage rates were obtained from the U.S. Bureau of Labor Statistics (BLS) May 2024 National Occupational Employment and Wage Estimates and adjusted to 2026 dollars using Employment Cost Indices developed by BLS.

Table 1 – Respondent Hourly Wage Rate

Labor Category	Standard Occupational Code	Average (Mean) Hourly Wage Rate
Legal	23-1011 Lawyers	$169.31
Managerial	11-1021 General & Operations Managers	$115.44
Technical	17-2081 Environmental Engineers	$98.35
Clerical	43-9061 Office Clerks, General	$39.44

The information collection requirements covered in this ICR will be administered by RCRA-Authorized State government regulatory programs and EPA. The States administer the program – thus there is no Federal burden. The hourly labor wage rates used to estimate costs to state agencies were calculated as shown in Table 2 below. Unloaded mean hourly labor wage rates for agency activities were taken from the May 2024 National Industry-Specific Occupational Employment and Wage Estimates for Federal, State, and local government and adjusted to 2025 dollars using Employment Cost Indices developed by BLS.

Table 2 – State Agency Hourly Wage Rate

Labor Category	Standard Occupational Code	Average (Mean) Hourly Wage Rate
Legal	23-1011 Lawyers	$125.97
Managerial	11-1021 General & Operations Managers	$124.90
Technical	17-2081 Environmental Engineers	$96.56
Clerical	43-9061 Office Clerks, General	$44.22

Respondent Tally

Exhibit 1 attached summarizes the total annual respondent hour and cost burden associated with all the requirements covered in this ICR. As shown in the exhibit, EPA estimates the annual respondent burden to be 36,489 hours.

State Agency Tally

Exhibit 2 attached summarizes the total annual state agency hour and cost burden associated with all the requirements covered in this ICR. As shown in the exhibit, EPA estimates the annual state agency burden to be 1,907 hours.

13. RESPONDENT CAPITAL AND O&M COSTS

Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should consider costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling, and testing equipment; and record storage facilities.
If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate.

Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

Exhibit 1 attached provides estimates of the annual respondent costs associated with the RCRA DSW exclusion paperwork requirements covered in this ICR. These costs are based on the cost of labor, capital, and operation and maintenance (O&M).

Capital Costs

EPA does not anticipate that respondents will incur capital costs in carrying out the information collection requirements covered in this ICR.

Operation & Maintenance Costs

EPA anticipates the O&M costs associated with this ICR to $20,331 annually.

14. AGENCY COSTS

Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

14a. Agency Activities

The information collection requirements covered in this ICR will be administered by RCRA-Authorized State government regulatory programs and EPA.

Requirement 1: DSW off-site transfer-based exclusion

(a) Emergency Preparedness

Emergency procedures

- Review submitted release report information
- Enter information into database tracking all releases
- Transmit information to respective response authorities

(b) Financial Assurance

Trust fund

- Receive and evaluate originally signed duplicate of the trust agreement and formal certification of acknowledgement
- Receive and evaluate other financial assurance
- Receive, review, and respond to request for release of the amount in excess of the current cost estimate
- Receive, review, and respond to request for release of the amount in excess of current cost estimate covered by trust fund
- Instruct the trustee to release to the owner/operator such funds as EPA specifies in writing
- Take other action as needed

Surety bond guaranteeing payment into a trust fund

- Receive and evaluate surety bond
- Receive, review, and file evidence of the increase in the penal sum or other financial assurance to cover the increase
- Receive and evaluate alternate financial assurance if required because of cancellation of the bond
- Receive, review, and file notice of cancellation from surety company
- Take other action as needed

<u>Letter of credit</u>

- Receive and evaluate letter of credit and letter referring to the letter of credit
- Receive, review, and file evidence of an increase in the credit or other financial assurance as specified to cover the increase
- Receive and evaluate alternate financial assurance if required because of termination of credit
- Receive, review, and file a notice of a decision not to extend the expiration date of the credit from the issuing institution
- Take other action as needed

<u>Insurance</u>

- Receive and evaluate certificate of insurance
- Receive, review, and approve reimbursements for expenditures
- Receive, review, and file evidence of an increase in the policy or approve other financial assurance as specified to cover the increase
- Receive and evaluate alternate financial assurance if required because of cancellation, termination, or failure to renew the insurance
- Receive, review, and file notice of cancellation
- Take other action as needed

<u>Financial test and corporate guarantee</u>

- Receive and evaluate a signed letter and accompanying material
- Receive, review, and approve an extension of the time allowed for submission of the documents specified in 40 CFR 261.143(e)(3)
- Receive, review, and file updated information at the close of each fiscal year
- Receive, review, and file a notice of intent to establish alternate financial assurance
- Request, receive, review and file reports of financial condition

- Receive and evaluate alternate financial assurance
- Prepare and transmit notice of disallowance
- Take other action as needed

Requirement 2: DSW generator-controlled exclusion

Emergency procedures

- Review submitted release report information
- Enter information into database tracking all releases
- Transmit information to respective response authorities

Requirement 3: Solid waste variances and non-waste determinations

(a) Re-Application

- Receive, review, and file re-applications every ten years

(b) Re-Notification

- Receive, review, and file notifications in the event of a change in circumstances

(c) Variance from Classification from Solid Waste (260.31(c) and 260.33(a))

- Review the variance demonstration
- Request additional information if necessary
- Deliberate and issue draft determination
- Publicize draft determination
- Hold hearing, if required
- Review comments and make final determination

(d) Non-Waste Determination

- Review the non-waste determination application
- Request additional information if necessary
- Deliberate and issue draft determination
- Publicize draft determination
- Hold hearing, if required
- Review comments and make final determination

Requirement 4: DSW “remanufacturing” exclusion

(a) Petition Process

- Review the petition
- Request additional information if necessary
- Deliberate and issue draft determination
- Publicize draft determination
- Hold hearing, if required
- Review comments and make final determination

(b) Technical Standards

- Conduct agency activities related to OMB Control No. 2050-0050 “Hazardous Waste Specific Unit Requirements and Special Waste Processes and Types” for additional facilities

(c) NESHAP Standards

- Conduct agency activities related to pollution standards covered by OMB Control No. 2050-0035 “Hazardous Waste Generator Standards” and OMB Control No. 2060-0318 “Air Emission Standards for Tanks, Surface Impoundment and Containers”.

Requirement 5: Required recordkeeping for speculative accumulation

There are no agency activities associated with these requirements.

Requirement 6: Export requirements

- Receive, review, and file shipment notifications and renotifications.
- Receive, review, and file annual reports.

14b. Agency Labor Cost

The information collection requirements covered in this ICR will be administered by RCRA-Authorized State government regulatory programs and EPA. The States administer the program – thus there is no Federal burden.

14c. Agency Non-Labor Costs

The Agency non-labor cost is $0 annually.

15) REASONS FOR CHANGE IN BURDEN

Explain the reasons for any program changes or adjustments reported in the burden or capital/O&M cost estimates.

There is an increase of 11,341 hours in the burden estimates for this ICR due to adjustments in Agency estimates.

16) PUBLICATION OF DATA

For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

Results from this ICR are not published formally.

17) DISPLAY OF EXPIRATION DATE

If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

There are no instruments for this ICR.

18) CERTIFICATION STATEMENT

Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

This information collection complies with all provisions of the Certification for Paperwork Reduction Act Submissions.