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MEMORANDUM

To: Hon. Lee Zelden, Administrator, US Environmental Protection Agency
From: Andrew Langer, Director, Center for Regulatory Freedom, CPAC Foundation
Date: January 16, 2026
Re: Comments on the US Environmental Protection Agency's Notice of Agency Information Collection Activities; "Proposals, Submissions, and Approvals: Revisions to the RCRA Definition of Solid Waste," Docket #EPA-HQ-OLEM-2018-0013, Published December 11, 2025

Below are comments of the American Conservative Union Foundation's (d/b/a. Conservative Political Action Coalition Foundation) (hereinafter "CPAC Foundation") Center for Regulatory Freedom (hereinafter "CRF"), in response to the US Environmental Protection Agency's Notice of Agency Information Collection Activities; "Proposals, Submissions, and Approvals: Revisions to the RCRA Definition of Solid Waste," Docket #EPA-HQ-OLEM-2018-0013, published December 11, 2025.

CRF is a project of the CPAC Foundation, a non-profit, non-partisan 501(c)(3) research and education foundation. Our mission is to inject a common-sense perspective into the regulatory process, to ensure that the risks and costs of regulations are fully based on sound scientific and economic evidence, and to ensure that the voices, interests, and freedoms of Americans, and especially of small businesses, are fully represented in the regulatory process and debates. Finally, we work to ensure that regulatory proposals address real problems, that the proposals serve to ameliorate those problems, and, perhaps most importantly, that those proposals do not, in fact, make public policy problems worse.

Introduction

The CPAC Foundation Center for Regulatory Freedom ("CRF") submits these comments to address the Environmental Protection Agency's continued administration of the Resource Conservation and Recovery Act ("RCRA") definition of "solid waste" through expansive documentation and recordkeeping requirements. CRF's concern is not opposition to

environmental protection, recycling, or responsible waste management. Rather, these comments focus on the need for regulatory discipline, statutory clarity, and affordability—principles that are essential to both effective environmental governance and economic growth.

At the core of this proceeding is a threshold legal question with far-reaching consequences: what constitutes “solid waste” under RCRA. That definition is not a technical detail or secondary consideration. It determines whether materials fall within the scope of Subtitle C hazardous-waste regulation and triggers a cascade of permitting, storage, transportation, reporting, and enforcement obligations. When a threshold definition is unclear or unstable, the resulting uncertainty reverberates throughout the regulatory system.

For decades, the Agency has struggled to articulate a coherent and durable interpretation of when a material is “discarded” and therefore a solid waste. Despite multiple rulemakings, guidance documents, and litigation cycles, the boundary between waste, secondary material, and legitimate commodity remains ambiguous. This ambiguity is not accidental or new; it has persisted across administrations and regulatory frameworks, creating a system in which legal status often depends less on statutory meaning than on administrative judgment.

As early as the 1990s, regulatory reform efforts warned that allowing jurisdictional definitions to drift would undermine both environmental outcomes and regulatory legitimacy. Those critiques cautioned that when agencies fail to resolve foundational statutory questions, they tend to substitute discretionary enforcement and procedural controls for clear legal rules. The definition of solid waste has become a textbook example of this phenomenon.

Rather than resolving the statutory meaning of “discarded material,” EPA has increasingly relied on conditional exclusions that operate only if regulated entities generate, maintain, and produce extensive documentation. Over time, these conditions have multiplied. Recordkeeping, contracts, audits, notifications, labeling, and ongoing certifications now function as the practical mechanism by which the Agency polices the solid-waste boundary. The current Information Collection Request reflects and reinforces this trend.

CRF’s concern is therefore structural, not episodic. The paperwork obligations associated with the definition of solid waste are not isolated administrative requirements; they are the means by which EPA manages unresolved legal boundaries. Compliance has become a continuing obligation to prove eligibility rather than a clear determination of regulatory status. This approach shifts costs and risk onto regulated parties while preserving agency discretion.

The result is a system in which paperwork substitutes for clarity. Conditional exclusions enforced through documentation reflect a failure to resolve statutory meaning and impose real economic costs, particularly on small and mid-sized firms that lack extensive compliance infrastructure. These costs affect investment decisions, discourage recycling and reuse, and divert resources away from productive and environmentally beneficial activities.

CRF submits these comments to urge a reassessment of this approach. Lawful, predictable, and innovation-friendly environmental governance requires clear jurisdictional boundaries, not perpetual documentation regimes. EPA and OMB should evaluate whether continued reliance on paperwork to administer the definition of solid waste serves RCRA’s objectives—or instead perpetuates regulatory uncertainty, unnecessary burden, and avoidable economic harm.

Executive Summary

The Center for Regulatory Freedom submits these comments to address the Environmental Protection Agency's continued reliance on paperwork and documentation to administer the definition of "solid waste" under the Resource Conservation and Recovery Act. The current Information Collection Request reflects a broader and longstanding structural problem: rather than resolving the statutory meaning of "discarded material," the Agency has constructed a regulatory framework in which jurisdiction is effectively determined through ongoing compliance obligations.

CRF's core concerns are summarized as follows:

- **EPA continues to administer the definition of solid waste through paperwork rather than law.**
Instead of providing a clear and durable interpretation of when a material is "discarded," EPA has relied on conditional exclusions that require regulated entities to prove eligibility through records, certifications, audits, and other documentation.
- **The current ICR exemplifies how conditional exclusions substitute documentation for jurisdictional clarity.**
The ICR does not clarify regulatory boundaries; it extends and normalizes the paperwork necessary to operate within an unresolved definitional framework, effectively transforming documentation into the mechanism of regulatory control.
- **This approach increases compliance costs and undermines RCRA's resource-conservation goals.**
Firms must invest in compliance infrastructure to preserve regulatory status rather than to manage environmental risk. These burdens fall particularly heavily on recycling, remanufacturing, and reuse activities, discouraging innovation and lawful secondary-material markets.
- **Paperwork burdens are not incidental but integral to EPA's current regulatory design.**
Documentation is not a temporary administrative tool but the primary means by which EPA enforces the solid-waste boundary, reflecting the Agency's reliance on procedure to manage unresolved legal questions.
- **These structural problems have been identified repeatedly for decades.**
Think tanks, trade associations, and legal scholars have long warned that ambiguous jurisdictional definitions invite discretionary enforcement and procedural expansion, a concern reinforced by repeated judicial scrutiny of EPA's Definition of Solid Waste rules.

CRF urges EPA and the Office of Management and Budget to reassess whether the current ICR satisfies the requirements of the Paperwork Reduction Act or merely perpetuates a known regulatory failure. Effective environmental governance requires clear statutory boundaries and predictable rules, not the continued expansion of paperwork as a substitute for regulatory clarity.

I. The Definition of "Solid Waste" as a Jurisdictional Boundary Under RCRA

The Resource Conservation and Recovery Act establishes a regulatory framework that turns fundamentally on whether a material is classified as "solid waste." That determination is jurisdictional, not incidental. If a material is deemed a solid waste, it may fall within Subtitle C

and trigger an extensive suite of federal requirements governing generation, storage, transportation, treatment, and disposal. If it is not a solid waste, those obligations do not apply. The definition thus functions as the gateway to federal regulatory authority.

Congress anchored that gateway in the concept of “discarded material.” Under the statute, EPA’s authority to regulate hazardous waste depends on whether a material has been discarded—an idea that, at minimum, implies abandonment, disposal, or removal from productive use. This statutory construct was intended to distinguish waste from products, inputs, and commodities, thereby limiting the scope of federal regulation to materials that genuinely present waste-management risks.

Over time, however, EPA’s interpretation of “discarded material” has expanded beyond its ordinary and intuitive meaning. Through rulemakings and guidance, the Agency has treated materials that are recycled, reused, transferred for processing, or managed within ongoing commercial systems as presumptive wastes unless they satisfy regulatory conditions. In doing so, EPA has blurred the statutory distinction between waste and materials in commerce.

This expansion has repeatedly drawn judicial scrutiny. Courts have recognized that EPA’s authority under RCRA is not boundless and that the Agency may not regulate materials as waste simply because it wishes to control their management. Judicial decisions vacating or limiting EPA’s Definition of Solid Waste rules reflect concern that the Agency has stretched the concept of “discarded” beyond what the statute can reasonably bear.

Despite these rulings, the underlying definitional ambiguity has not been resolved. Instead, EPA has adjusted its regulatory approach at the margins—modifying exclusions, refining conditions, and adding procedural safeguards—without squarely clarifying when a material ceases to be a product or secondary material and becomes a waste. This unresolved ambiguity invites administrative improvisation.

A jurisdictional definition of this importance should be stable, intelligible, and predictable. Regulated entities should be able to determine their legal obligations based on clear statutory standards, not on evolving agency interpretations or enforcement preferences. When the boundary between regulated and unregulated activity is unclear, compliance becomes a matter of guesswork rather than law.

Absent clarity, firms cannot reliably determine whether they are subject to Subtitle C requirements without seeking guidance, legal opinions, or regulatory assurances. This uncertainty increases transaction costs, discourages beneficial activities such as recycling and reuse, and exposes firms to enforcement risk even when they act in good faith.

This problem raises broader administrative-law concerns. Agencies are charged with implementing statutes, not redefining their jurisdiction through conditional interpretations. When statutory boundaries are unclear or stretched, agencies accumulate discretion at the expense of predictability, accountability, and the rule of law.

Ultimately, the persistent uncertainty surrounding the definition of solid waste is the root cause of the downstream paperwork burdens at issue in this proceeding. Because EPA has not resolved the jurisdictional question in law, it has sought to manage it through procedure. The proliferation of documentation requirements is not an accidental byproduct of RCRA implementation; it is a

direct consequence of an unresolved and unstable definition at the core of the regulatory program.

II. From Definition to Documentation: How EPA Uses Conditional Exclusions

Faced with persistent uncertainty over the statutory meaning of “discarded material,” EPA has increasingly relied on conditional exclusions as a regulatory workaround. Rather than clearly defining when a material is or is not a solid waste, the Agency has created a system in which materials may avoid hazardous-waste regulation only if regulated entities satisfy a series of procedural and documentation-based conditions. This approach reflects an effort to manage ambiguity administratively rather than resolve it legally.

These conditional exclusions fundamentally alter the allocation of burdens under RCRA. Instead of EPA bearing the responsibility to demonstrate that a material falls within its regulatory jurisdiction, the burden shifts to firms to prove that they qualify for exclusion. Regulatory status is no longer determined by objective statutory criteria but by an entity’s ability to document compliance with EPA-designed conditions.

The conditions attached to these exclusions are extensive and multifaceted. They commonly include recordkeeping obligations, written contracts between parties, legitimacy determinations, environmental audits, notifications to regulators, labeling requirements, and ongoing retention of compliance documentation. In some cases, firms must also meet training, financial assurance, emergency preparedness, or reporting requirements as a prerequisite for exclusion.

In practice, these conditions function as de facto permits, even though they lack the procedural safeguards of formal permitting programs. Firms must effectively pre-clear their activities through documentation, maintain continuous compliance records, and be prepared to justify their status during inspections or enforcement actions. Yet they receive none of the certainty, durability, or reliance interests typically associated with permits issued through notice-and-comment processes.

As a result, eligibility under conditional exclusions is inherently contingent and revocable. A paperwork lapse, documentation error, or differing interpretation by an inspector can convert a non-waste material into a regulated hazardous waste overnight. Compliance thus becomes enforcement-driven, with regulatory status determined retrospectively rather than prospectively.

It is important to emphasize that conditional exclusions do not eliminate regulation; they repackage it. The regulatory obligations associated with Subtitle C are not removed but transformed into procedural requirements that govern access to the exclusion itself. The practical effect is continued regulation through paperwork rather than through clearly defined legal boundaries.

This structure imposes substantial transaction costs and legal risk. Firms must invest in compliance systems, legal review, and ongoing administrative oversight simply to preserve their regulatory status. These costs are magnified for smaller entities and for businesses engaged in recycling, remanufacturing, and reuse, where margins may not support extensive compliance infrastructure.

Traditional jurisdictional determinations operate differently. Under a clear statutory boundary, regulated entities can assess applicability based on objective criteria and plan accordingly. Conditional exclusions invert this model, replacing clear applicability determinations with ongoing demonstrations of eligibility that depend on documentation and agency discretion.

By blurring the line between regulation and enforcement discretion, EPA's reliance on conditional exclusions undermines fundamental rule-of-law values. Jurisdiction should be determined by law, not by paperwork compliance. When regulatory status depends on administrative conditions rather than statutory meaning, predictability erodes, discretion expands, and confidence in the regulatory system is weakened.

III. Paperwork as a Substitute for Regulatory Clarity

In the absence of a clear and durable definition of "solid waste," paperwork has become the primary operational mechanism through which EPA enforces its Definition of Solid Waste policy. Rather than determining jurisdiction through statutory interpretation, the Agency relies on documentation to monitor, verify, and police compliance. The result is a regulatory system in which administrative procedure substitutes for legal clarity.

Within this framework, documentation has become the currency of compliance. Regulatory status is no longer established by the inherent nature of a material or its use, but by the existence and adequacy of records, certifications, contracts, and audits. Firms are regulated not on the basis of what they do, but on their ability to document that they meet the Agency's conditions.

This reliance on recordkeeping effectively substitutes paperwork for clear legal status. Materials that would otherwise fall outside the ordinary understanding of waste are treated as presumptive wastes unless documentation demonstrates eligibility for exclusion. Legal classification thus depends on the presence of records rather than on statutory meaning.

As a consequence, compliance depends on maintaining ongoing proof rather than on meeting objective criteria. Firms must continually generate and retain documentation to preserve their regulatory position, even when their operations remain unchanged. Regulatory certainty becomes temporary and contingent, subject to review at any inspection or enforcement action.

The burden imposed by this system is cumulative. Documentation requirements do not exist in isolation; they are layered across multiple exclusions, activities, and compliance programs. Over time, these layers compound, creating substantial administrative overhead that is often disconnected from environmental performance or risk reduction.

Notably, paperwork obligations persist regardless of actual environmental risk. Even when materials are safely managed, reused in closed systems, or traded as legitimate commodities, firms must still satisfy extensive documentation requirements. The regulatory emphasis is placed on procedural compliance rather than on outcomes or risk-based management.

This structure disproportionately favors large firms with dedicated compliance departments and legal resources. Smaller businesses, startups, and innovative recycling operations often lack the capacity to navigate complex documentation regimes, effectively creating barriers to entry and

limiting competition. The result is a regulatory environment that entrenches incumbents while discouraging innovation.

Ultimately, paperwork does not resolve the underlying definitional question at the heart of the DSW program. It merely manages uncertainty. By substituting documentation for statutory clarity, EPA perpetuates a system that is administratively burdensome, economically distortive, and legally fragile—without addressing the core issue of what constitutes “solid waste” under RCRA.

IV. Impacts on Recycling, Reuse, and Innovation

Regulatory ambiguity surrounding the definition of solid waste has a direct and measurable effect on investment in recycling and reuse. When firms cannot determine with confidence whether secondary materials will be treated as products or as regulated wastes, they face heightened legal and financial risk. This uncertainty discourages capital investment in recycling infrastructure and undermines long-term planning, particularly in sectors that rely on secondary materials as feedstocks.

Treating secondary materials as presumptive waste unless proven otherwise is fundamentally at odds with circular-economy principles. Recycling and reuse depend on the ability to move materials through legitimate markets without triggering full hazardous-waste regulation. When materials in commerce are treated as wastes by default, regulatory design conflicts with the very resource-conservation goals RCRA was intended to advance.

Faced with this uncertainty, firms often respond by avoiding recycling pathways altogether. Rather than risk reclassification or enforcement exposure, companies may choose disposal or other less efficient management options that offer greater regulatory certainty. This defensive behavior is a rational response to ambiguity but leads to worse environmental and economic outcomes.

Paperwork burdens further compound these disincentives. Extensive documentation requirements slow decision-making, delay project development, and raise the cost of experimentation with new recycling technologies or processes. For innovative or emerging approaches—where regulatory precedents may be limited—the compliance burden can be enough to deter investment entirely.

There is a clear disconnect between EPA’s stated commitment to promoting recycling and its regulatory design. While the Agency regularly emphasizes sustainability and resource recovery, its reliance on conditional exclusions and documentation-heavy compliance frameworks sends the opposite signal to the regulated community. Regulatory uncertainty and procedural complexity are inconsistent with a policy environment that encourages innovation.

Compliance costs also divert resources away from environmental improvements. Funds spent on legal review, recordkeeping systems, audits, and compliance staff are funds not spent on process improvements, safety enhancements, or investment in cleaner technologies. This misallocation of resources undermines both environmental performance and economic efficiency.

These impacts have broader implications for affordability and competitiveness. Increased compliance costs are ultimately borne by consumers through higher prices and reduced product availability. At the same time, U.S. firms operating under complex and uncertain regulatory regimes face disadvantages relative to competitors in jurisdictions with clearer and more predictable rules.

Ultimately, regulatory design matters as much as regulatory intent. Even well-intentioned environmental objectives can be undermined by frameworks that rely on ambiguity and paperwork. A regulatory system that treats recycling as presumptively suspect and conditions legitimacy on documentation will continue to discourage innovation unless the underlying design is reformed.

V. Administrative Law Concerns: Discretion, Enforcement, and Predictability

The Definition of Solid Waste framework raises fundamental administrative-law concerns that extend beyond RCRA and implicate core principles of lawful governance. At its heart, the DSW program illustrates how unresolved statutory boundaries can lead agencies to substitute discretion and procedure for clear legal rules. When jurisdiction is uncertain, administrative power tends to expand through enforcement mechanisms rather than through transparent rulemaking.

Agencies are expected to govern through rules of general applicability that provide notice and constrain discretion. By contrast, EPA's reliance on conditional exclusions places regulatory authority in the hands of enforcement staff and inspectors, who effectively determine regulatory status based on documentation reviews and site-specific judgments. This shift from rulemaking to enforcement undermines predictability and accountability.

Paperwork-driven regulatory regimes exacerbate this problem by empowering enforcement personnel over regulated entities. Because eligibility for exclusion depends on the sufficiency of records and ongoing documentation, compliance is assessed retrospectively and subjectively. Firms may believe they are operating lawfully, only to discover—after an inspection or enforcement action—that their documentation is deemed insufficient.

Conditional exclusions also fail to create durable reliance interests. Unlike permits or clearly defined regulatory classifications, exclusions can be lost due to minor procedural errors or differing interpretations. Regulated entities cannot confidently rely on their regulatory status, even when their operations and environmental practices remain unchanged.

Notice, predictability, and clear standards are essential to the rule of law. Regulated parties must be able to understand their obligations in advance and conform their conduct accordingly. When jurisdictional determinations hinge on administrative conditions rather than statutory meaning, notice becomes blurred and compliance becomes uncertain.

Unresolved jurisdictional questions should not be managed administratively through layered procedures and documentation. Doing so effectively allows agencies to expand or contract their authority without confronting statutory limits. This approach raises separation-of-powers concerns and weakens the legal foundations of regulatory programs.

For these reasons, EPA should respect statutory boundaries and address the definition of solid waste through clear legal interpretation rather than through discretionary, paperwork-based regimes. A system grounded in law, rather than administrative improvisation, is essential to preserving predictability, fairness, and public confidence in environmental regulation.

VI. The PRA and the Limits of Paperwork-Based Governance

The Paperwork Reduction Act serves as a critical safeguard against unnecessary, duplicative, or inefficient information collection by federal agencies. Its purpose is not merely to tally burden hours, but to ensure that agencies collect information only when it is necessary for the proper performance of agency functions and has demonstrable practical utility. The PRA is intended to discipline regulatory design, not to accommodate it.

Under the PRA, agencies must demonstrate that information collections are justified, minimally burdensome, and useful. This requires more than showing that paperwork facilitates internal administration or enforcement convenience. Information collections must meaningfully advance statutory objectives and not serve as substitutes for unresolved legal or policy decisions.

In this context, it is appropriate to question whether paperwork that exists primarily to manage definitional ambiguity satisfies PRA standards. When documentation is required not to measure risk, ensure safety, or improve environmental outcomes—but to compensate for unclear jurisdictional boundaries—its practical utility is suspect. Paperwork should not be used to paper over regulatory uncertainty.

The cumulative impact of these requirements is particularly important under RCRA. Documentation obligations associated with the definition of solid waste do not exist in isolation; they layer onto broader hazardous-waste recordkeeping, reporting, and compliance programs. Over time, these cumulative burdens grow, even as the underlying statutory question remains unresolved.

These ongoing documentation requirements have direct affordability implications. Compliance costs are ultimately borne by consumers, workers, and small businesses through higher prices, reduced market entry, and constrained innovation. For firms engaged in recycling and reuse, paperwork burdens can determine whether a project proceeds at all.

CRF urges the Office of Management and Budget to consider whether approval of the current ICR perpetuates a known regulatory failure. Reauthorizing information collections that exist solely to administer an unstable regulatory boundary risks entrenching poor regulatory design and undermining the PRA's purpose as a check on administrative overreach.

The PRA should not be used to normalize paperwork-based governance. When information collection becomes the primary mechanism for managing unresolved statutory questions, the appropriate response is regulatory reform, not indefinite paperwork renewal. Effective oversight requires confronting the root cause of the burden—not institutionalizing it.

Conclusion

The Center for Regulatory Freedom supports effective environmental protection and the promotion of legitimate recycling, reuse, and resource conservation. These goals are not in tension with regulatory discipline or statutory clarity. To the contrary, they depend on a regulatory framework that is predictable, lawful, and capable of distinguishing genuine waste-management risks from ordinary commercial activity.

As these comments explain, the definition of “solid waste” is a foundational legal issue under the Resource Conservation and Recovery Act. It establishes the jurisdictional boundary for Subtitle C regulation and determines when federal oversight is appropriate. When that boundary is unclear, uncertainty cascades throughout the regulatory system, affecting compliance obligations, investment decisions, and environmental outcomes.

Decades of experience demonstrate that paperwork cannot substitute for clarity. Documentation requirements may manage uncertainty temporarily, but they do not resolve it. Instead, they impose ongoing costs, expand administrative discretion, and shift regulatory risk onto regulated entities without addressing the underlying statutory question.

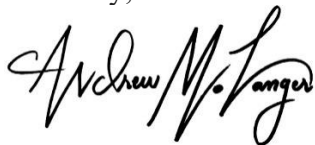
CRF is particularly concerned that repeated renewal of information collection requests risks entrenching administrative workarounds as permanent features of the regulatory landscape. Each renewal reinforces a system in which jurisdiction is administered through procedure rather than law, making reform more difficult over time.

EPA should confront the definitional problem directly. Rather than continuing to rely on conditional exclusions enforced through documentation, the Agency should articulate a clear, durable interpretation of when a material is “discarded” and therefore subject to regulation. Doing so would strengthen regulatory legitimacy, improve compliance outcomes, and better align environmental objectives with economic reality.

The Office of Management and Budget has an essential role to play in this process. Under the Paperwork Reduction Act, OMB is charged with ensuring that information collections have practical utility and do not impose unnecessary burden. Meaningful oversight requires evaluating whether paperwork is being used to compensate for unresolved regulatory design flaws.

CRF remains committed to advancing lawful, affordable, and predictable regulation. Environmental protection is best served by clear statutory boundaries, disciplined administration, and regulatory systems that encourage innovation rather than deter it. CRF appreciates the opportunity to submit these comments and stands ready to engage constructively on reforms that advance these principles.

Sincerely,

A handwritten signature in black ink, reading "Andrew M. Langer". The signature is fluid and cursive, with the first name "Andrew" being the most prominent part.

Andrew M. Langer
Director
CPAC Foundation Center for Regulatory Freedom