

US EPA ARCHIVE DOCUMENT

2014 DSW Final Rule Frequently Asked Questions

1. Why did EPA revise the 2008 Definition of Solid Waste (DSW) Rule?

EPA revised the 2008 DSW rule because of significant regulatory gaps in that rule, which could result in risk to human health and the environment from hazardous waste recycling activities, including disproportionate risk to minority and low-income populations. By exempting certain type of hazardous secondary materials from the definition of solid waste, the 2008 DSW rule also exempted these materials from RCRA hazardous waste regulation, increasing the potential for dangerous mismanagement.

In particular, EPA identified third-party hazardous materials recyclers as posing a risk of fires, explosions, accidents and releases of hazardous constituents to the environment. This is because the economics of commercial recycling contain market disincentives that encourage over-accumulation and mismanagement of hazardous secondary material. In addition, the 2008 DSW rule lacked the tools needed for proper oversight of these facilities by EPA, states and the communities affected by them.

At the same time, EPA has made a significant step forward in promoting recycling innovation by affirming the legitimacy of pre-existing recycling exclusions, such as the scrap metal exclusion, and revising the definition of legitimate recycling to recognize the legitimacy of in-process recycling and of commodity-grade recycled products, such as metal commodities. The rule also has included revisions to help strengthen and promote other types of recycling, in particular the solvent materials sent to remanufacturing. These types of recycling can result in resource conservation and other environmental and economic benefits, while continuing to protect human health and the environment.

2. How is EPA addressing the concerns identified within the 2008 DSW rule as needing improvement?

The 2014 DSW final rule includes provisions to address certain regulatory gaps in the 2008 rule through increased transparency, oversight and accountability for hazardous materials recycling, including the following:

- (1) Withdrawing of the transfer-based exclusion and replacing it with the new verified recycler exclusion. This new provision:
 - EPA is replacing the transfer-based exclusion with a new verified recycler exclusion. This will allow EPA and the states to use the RCRA permitting process or solid waste variance process to verify that a facility has established rigorous safety measures to manage the material.
 - In making this demonstration, facilities also have to submit their financial assurance plans to ensure that they are financially stable and have funds

available to address their hazardous secondary materials should the unexpected happen.

- Requires that all entities subject to the new rules—both generators and recyclers—meet emergency response and preparedness requirements. This includes requiring facilities to make arrangements with local emergency response officials, which provides local fire departments and hospitals with critical information to enable them to tailor their preparations and response, thereby reducing risk to communities.
 - Includes a public participation requirement for recyclers seeking a verified recycler variance, so that communities are notified prior to recycling operations beginning and have a chance to weigh in on the environmental decisions that affect them.
 - Requires facilities seeking a verified recycler variance to address whether their activities pose a risk to nearby communities and whether their activities add to the cumulative environmental impacts.
- (2) Clearly defining when hazardous secondary materials are contained under the new exclusions. Having a clear, objective definition in the regulations of when a hazardous secondary material is properly contained will facilitate compliance with the regulation, preventing mismanagement of the hazardous secondary materials and protecting nearby communities.
- (3) Establishing a clear, uniform legitimate recycling standard for all hazardous secondary materials recycling will improve compliance and help ensure that the hazardous secondary materials are in fact legitimately recycled, rather than illegally disposed of.

3. How does the final rule retain flexibility to allow companies to use good business practices to increase recycling in a safe and appropriate manner?

The new DSW rule also includes several provisions that result in both resource conservation and economic benefits by encouraging certain types of in-process recycling and remanufacturing.

- (1) The rule explains the legitimacy of the pre-2008 DSW exclusions, such as the scrap metal exclusion, and re-affirms that the final rule does not change the regulatory status of these long-standing recycled materials.
- (2) The final rule includes a revised definition of legitimate recycling that addresses the legitimacy of in-process recycling and of commodity-grade recycled products, such as metal commodities.
- (3) The rule retains the exclusion for recycling under the control of the generator, including recycling on site, within the same company, and through toll manufacturing

agreements. Generators who maintain control over their hazardous secondary materials and recycling processes have strong economic incentives to maintain oversight of, and responsibility for, the hazardous secondary material that is reclaimed.

- (4) Finally, the final rule includes a targeted remanufacturing exclusion for certain higher-value hazardous spent solvents that are being remanufactured into commercial-grade products. This allows manufacturers to reduce the use of virgin solvents, resulting in both economic and environmental benefits, including energy conservation and reduced greenhouse gas emissions.

4. What are the next steps in implementing the DSW rule?

The DSW rule will become federally effective six months after it is published in the Federal Register in those states where EPA administrators the RCRA program. However, because most states are authorized to administer and enforce the RCRA program in lieu of the federal program, these states will have to adopt the DSW rule before it becomes effective there.

EPA plans to conduct outreach to the states, offering training and guidance on the new rule and urging the states to adopt the rule as quickly as possible. EPA will also reach out to those facilities operating under the 2008 DSW rule to help them understand and comply with the new requirements.