

US EPA ARCHIVE DOCUMENT

Quick Guide to the Definition of Solid Waste Final Rule

What is the Definition of Solid Waste (DSW) final rule and does it apply to me?

The DSW final rule, published October 30, 2008, excludes certain hazardous secondary materials from the RCRA Subtitle C hazardous waste regulations when reclaimed, provided certain conditions are met.

To use the DSW exclusions, you must:

1. Be located in a state or territory where the rule is effective. (The DSW final rule is currently effective in Alaska, Iowa, Pennsylvania, New Jersey, the U.S. Virgin Islands, American Samoa, the Northern Mariana Islands, and on tribal lands.)
2. Reclaim or send for reclamation a hazardous secondary material. (Hazardous secondary material means a secondary material (e.g., spent material, by-product, or sludge) that, if discarded, would be identified as hazardous waste under 40 CFR part 261.) Recycling by burning for energy recovery or as “use constituting disposal” (i.e., materials managed directly on the land) is not eligible for these exclusions.
3. Comply with the conditions and requirements of the applicable DSW exclusion.
4. Not be managing the hazardous secondary material under another exclusion from the definition of solid waste under 40 CFR 261.4(a). Additionally, the hazardous secondary material cannot be a spent lead acid battery or meet the hazardous waste listing of K171 and K172 in 40 CFR 261.32.

What are the DSW final rule exclusions (and their associated conditions)?

In the final rule, EPA codified two exclusions from the definition of solid waste:

- **GENERATOR-CONTROLLED EXCLUSION** for hazardous secondary materials reclaimed on-site, within the same company, or as part of a tolling arrangement. [40 CFR 261.2(a)(2)(ii) and 261.4(a)(23)]

Conditions:

- Must legitimately reclaim hazardous secondary materials (40 CFR 260.43).
- Must contain hazardous secondary materials.
- Must not speculatively accumulate hazardous secondary materials.
- Must notify regulatory authority prior to managing hazardous secondary materials and every other year thereafter (40 CFR 260.42).
- Must sign certification statement (only for same-company and tolling arrangements; 40 CFR 260.10).

- **TRANSFER-BASED EXCLUSION** for hazardous secondary materials transferred off-site for reclamation. [40 CFR 261.4(a)(24) and (25)]

Conditions for GENERATORS:

- Must legitimately reclaim hazardous secondary materials (40 CFR 260.43).
- Must contain hazardous secondary materials.
- Must not speculatively accumulate hazardous secondary materials.

- Must notify regulatory authority prior to managing hazardous secondary materials and every other year thereafter (40 CFR 260.42).
- Must maintain shipment records and confirmations of receipt for three years.
- If sending materials to a facility without a RCRA part B permit, must conduct, document, and certify reasonable efforts to ensure that the reclamation facility and any intermediate facility intends to safely and legitimately reclaim the hazardous secondary materials.

Conditions for RECLAIMERS and INTERMEDIATE FACILITIES:

- Must legitimately reclaim materials (40 CFR 260.43). (For reclaimers only.)
- Must contain hazardous secondary materials.
- Must not speculatively accumulate hazardous secondary materials.
- Must notify regulatory authority prior to managing hazardous secondary materials and every other year thereafter (40 CFR 260.42).
- Must maintain shipment records for three years and send confirmations of receipt to the generator.
- Must have financial assurance.
- Must manage recycling residuals safely. (For reclaimers only.)

What is “legitimate recycling”?

In the final rule, EPA defined legitimate recycling in 40 CFR 260.43.

In order to be legitimate recycling,

- The hazardous secondary material must provide a useful contribution to the recycling process or intermediate; and
- The recycling process must produce a valuable product or intermediate.

You must also consider:

- Whether the hazardous secondary materials are managed as valuable commodities
- Whether products of the recycling process contain significantly higher levels of hazardous constituents

Where should I go for more information?

If you are interested in managing hazardous secondary materials under the rule, here are some tips for getting started:

- Visit the DSW Implementation website at <http://www.epa.gov/epawaste/hazard/dsw/impresource.htm>. This website contains links to the federal regulations, a map of where the rule is effective, and many of the guidance documents that EPA has developed to assist with understanding of the rule. More detailed information regarding reasonable efforts, legitimate recycling, and the contained standard is also provided.
- Feel free to contact the U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery:

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