

### Revision Checklist 233 Summary

<b>Rule Title:</b>	Revisions to the Definition of Solid Waste, Response to Vacatur of Certain Provisions of the Definition of Solid Waste Rule
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<b>Reference:</b>	80 <u>FR</u> 1694 – 1814, 83 <u>FR</u> 24664-24671
<b>Promulgation Date:</b>	January 13, 2015, May 30, 2018
<b>Effective Date:</b>	July 13, 2015, May 30, 2018
<b>Cluster:</b>	RCRA Cluster XXIV
<b>Provision Type:</b>	Non-HSWA
<b>Linkage:</b>	13, 154, 163, 177, 219
<b>Optional:</b>	No, although certain sections are optional

**Summary:** The Environmental Protection Agency (EPA, or the Agency) is publishing a final rule that revises several recycling-related provisions associated with the definition of solid waste used to determine hazardous waste regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The purpose of these revisions is to ensure that the hazardous secondary materials recycling regulations, as implemented, encourage reclamation in a way that does not result in increased risk to human health and the environment from discarded hazardous secondary material. On July 7, 2017, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), vacated portions of this rule. The court issued the mandate for its decision on March 14, 2018, at which point the orders became effective. A subsequent final rule implemented these vacatur, which is incorporated into the rule checklists. Detailed information regarding the vacatur’s impact on authorized states is included in the Response to Vacatur final rule preamble.

**State Authorization:** This rule is placed in RCRA Cluster XXIV. The state modification deadline is July 1, 2016 (or July 1, 2017, if a state statutory change is necessary).

This rule is promulgated pursuant to non-HSWA authority. The authorization checklist has been subdivided for ease of state adoption. Parts of this rule are considered to be more stringent than the current federal requirements, while other parts are considered to be less stringent than the current federal requirements. Stringency will be affected by whether the state is authorized for the October 30, 2008 or the January 13, 2015 definition of solid waste rule. States will not be required to adopt and seek authorization for parts of today’s rule that are considered to be less stringent. The sub-checklists are described below:

- (1) States that adopted the 2008 rule must adopt Checklists A, B, C, and D1 (or provisions that are at least as stringent as these) and have the option of adopting Checklist E.
- (2) States that have not adopted the 2008 or the 2015 rule must adopt Checklists A, B, and C (or provisions that are at least as stringent as these) and have the option of adopting Checklists D2 and E.
- (3) States that have adopted at least the mandatory portions of the 2015 rule (i.e., the previous versions of Checklists A, B and C) have the option of adopting revised Checklists A, B, D2 and E.

**Checklist A** – Changes affecting all non-waste determinations and variances - More stringent for all state programs that have not adopted the 2015 rule. Less stringent for states that have adopted the 2015 rule.

**Checklist B** – Legitimacy-related provisions, including prohibition of sham recycling, definition of legitimacy, definition of contained - More stringent for all state programs that have not adopted the 2015 rule. Less stringent for states that have adopted the 2015 rule.

**Checklist C** – Speculative Accumulation - More stringent for all state programs that have not adopted the 2015 rule.

**Checklist D1** – Changes to the 2008 DSW exclusions and the 2008 non-waste determinations for those states operating under the 2008 DSW rule - More stringent for states operating under 2008 DSW rule, all others see checklist D2

**Checklist D2** – DSW exclusions and non-waste determinations, includes provisions from the 2008 DSW rule and revisions from the 2015 DSW final rule and 2018 DSW final rule- Less stringent for states not operating under 2008 DSW rule (including both states that never adopted the DSW exclusions and non-waste determinations, and states that adopted the 2015 DSW final rule)

**Checklist E** – Remanufacturing exclusion - Less stringent for all states that did not adopt the 2015 DSW rule.

**Attorney General (AG) Certification Guidance:** Specific AG certification of statutory authority may not be required for this checklist as long as the AG has previously demonstrated authority for the definition of solid waste.

**Program Description (PD) Guidance:** A state seeking authorization for this checklist should determine whether the revisions impact the program described in the Program Description.

**Incorporation by Reference Guidance:** There is no special guidance for states that incorporate by reference.