

Fact Sheet

Revised Definition of Solid Waste Rule

Oregon has adopted the mandatory pieces of the U.S. Environmental Protection Agency's revised Definition of Solid Waste rule. The rule became effective in Oregon on January 1, 2023. There are differences between the federal and state versions of the rule, the most significant difference being Oregon did not adopt the new exclusions for hazardous secondary materials. Oregon's Administrative Rule 340-101-0004(8) explicitly excludes the Transfer-Based and Verified Recycler exclusions for hazardous secondary materials. Previously existing exclusions and exemptions for hazardous secondary materials are still in effect in Oregon and are now subject to new and more protective requirements.

This is an overview and does not encompass all aspects of hazardous waste regulations applicable to your situation.

Who is affected?

These rule changes affect all large, small and very small quantity hazardous waste generators that recycle hazardous secondary materials or seek a variance from managing a specific, legitimately recycled hazardous material as hazardous waste.

Key Benefits



Promotes safe recycling

Provides regulatory certainty and a framework promoting legitimate recycling of hazardous materials.



No second-guessing HSM

Provides clear guidelines for proper management of hazardous secondary materials.



Provides a new variance pathway

Generators can apply for a non-waste determination variance to recycle what would otherwise be hazardous waste.



Creates and revises key definitions

Including definitions of contained, facility, hazardous secondary material, hazardous secondary material generator and sham recycling.

What changed?

The rule adopts the four factors of legitimate recycling of hazardous secondary materials and establishes new speculative accumulation and storage requirements. The Oregon Definition of Solid Waste rule also requires notification, reporting, and a 10-year renewal cycle for all variances approved after January 1, 2023. The table below provides more detail.

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QUESTION	ANSWER
<p>What is hazardous secondary material, and what is a hazardous secondary material generator?</p>	<p>Hazardous secondary material, also called HSM, means a secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be a hazardous waste under Title 40 of the Code of Federal Regulations section 261.</p> <p>Hazardous secondary material generator means any person whose act or process produces hazardous secondary materials at the generating facility. For the purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of 40 CFR 261.2(a)(2)(ii) and 261.4(a)(23), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.</p>
<p>What are the speculative accumulation requirements for hazardous secondary materials?</p>	<p>HSM is not accumulated speculatively if it is recyclable under the existing exemptions and exclusions, it meets the legitimacy criteria, it is stored protectively according to rule, and the generator is able to show during the calendar year the amount of material recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount accumulated. Generators must manage materials in labeled storage units and track accumulation dates using labels or through an inventory log or other appropriate method.</p>
<p>What are the legitimacy criteria?</p>	<p>EPA's definition of legitimate recycling is in Title 40 of the Code of Federal Regulations section 260.43. The four legitimacy factors are:</p> <ol style="list-style-type: none"> 1. Legitimate recycling of hazardous secondary material must provide a useful contribution to the recycling process or to a product or intermediate of the recycling process. 2. The recycling process must produce a valuable product or intermediate. 3. The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. 4. The product of the recycling process is analogous to a legitimate product or intermediate.
<p>What is meant by "sham recycling"?</p>	<p>Sham recycling occurs when a recycler does not adhere to legitimacy criteria. It may include situations where a secondary material is ineffective or only marginally effective for the claimed use, used in excess of the amount necessary, or handled in a manner inconsistent with its use as a raw material or commercial product substitute. If a material is found to be sham recycled, then it is a solid waste and, therefore, a hazardous waste and subject to regulation.</p>
<p>How has Oregon modified the definition of "contained"?</p>	<p>The federal definition of contained allows management in land-based units. Oregon removed this part of the definition to meet pre-existing state requirements. Only permitted transfer, storage, and disposal facilities (TSDFs) may use land-based units.</p>

Why did Oregon adopt these provisions of the federal DSW rule?

To retain authorization to implement the hazardous waste program in Oregon in lieu of EPA, DEQ was federally required to adopt the mandatory, more stringent provisions of the most recent version of the federal Definition of Solid Waste rule. This adoption ensures a consistent and clear definition of legitimate recycling of hazardous secondary materials. These regulations provide much-needed regulatory certainty and a common-sense framework to promote the legitimate recycling of hazardous secondary materials. A clear definition of legitimate recycling is good for business and the environment and will result in conserving natural resources, reducing waste, saving energy and reducing costs.

Where to find more information?

Regulation	Federal Citation	Oregon Administrative Rule Citation
HSM exclusions: verified recycler, transfer-based, export	40 CFR 261.4(a)(23) – (25) 40 CFR 261.4(a)(27)	Excluded at OAR 340-101-0004 Excluded at OAR 340-101-0004
Speculative accumulation and HSM management	40 CFR 261.1(c)(8)	Adopted at OAR 340-100-0002
Legitimacy criteria	40 CFR 260.43	Modified at OAR 340-100-0043
Variance requirements	40 CFR 260.30 – 260.31 40 CFR 260.33 – 260.34 40 CFR 260.42(a)	Adopted at OAR 340-100-0002 Adopted at OAR 340-100-0002 Modified at OAR 340-100-0042
Definition of contained	40 CFR 260.10 “Contained”	Modified at OAR 340-100-0010
Definition of Hazardous secondary material	40 CFR 260.10 “Hazardous secondary material”	Adopted at OAR 340-100-0002
Definition of Hazardous secondary material generator	40 CFR 260.10 “Hazardous secondary material generator”	Adopted at OAR 340-100-0002
Definition of sham recycling	40 CFR 261.2(g)	Adopted at OAR 340-100-0002
Definition of facility	40 CFR 260.10 “Facility”	Adopted at OAR 340-100-0002

Have questions?

DEQ has made it easy for you to get your questions answered. To learn more and request free, non-regulatory technical assistance, please visit [DEQ's Hazards and Cleanup page](#) and click on “Technical Assistance”.

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