



Fact Sheet

Legitimate Recycling of Hazardous Secondary Materials

Last updated: September 2023

Oregon has adopted elements of the Environmental Protection Agency's revised Definition of Solid Waste rule. The revised rule became effective in Oregon on Jan. 1, 2023. There are differences between the federal DSW rule and the version in effect in Oregon. Oregon did not adopt the new exclusions for hazardous secondary materials, and Oregon's Administrative Rule 340-101-0004(8) explicitly removed the Transfer-Based and Verified Recycler exclusions for hazardous secondary materials, or HSM. Previously existing exclusions and exemptions for HSM remain in effect in Oregon and are now subject to new and more protective requirements.

This fact sheet focuses on the requirements for the legitimate recycling of HSM. Consult both federal and state regulatory citations for more specific information on individual requirements, as this summary is an overview. There may be aspects of federal and state hazardous waste regulation or solid waste laws that apply even when a waste material meets other HSM exclusions or exemptions. These laws and regulations include, but are not limited to, Oregon Revised Statutes Chapter 459 and Oregon Administrative Rules Chapter 340 Division 93 through 97.

Who is affected?

These rule changes affect all large, small and very small quantity hazardous waste generators that choose to recycle HSM. They may impact vendors who manage these wastes.

Key Benefits



Promotes safe recycling

Provides regulatory certainty and a framework promoting legitimate recycling of HSM.



No second-guessing

Provides clear guidelines for proper management of HSM.



Requires legitimacy determination

HSM generators must determine if the recycling of their HSM meets legitimacy criteria. They must produce and maintain documentation of legitimacy determination on-site for each recycled waste.



Creates and revises key definitions

This rule includes new definitions for the following terms: contained, facility, hazardous secondary material, hazardous secondary material generator and sham recycling.

Translation or other formats

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What changed?

The revised Definition of Solid Waste rule creates four factors, called the legitimacy criteria, for legitimate recycling of HSM. Generators must document the legitimacy determination for each HSM and for each recycling process. The revised rule also establishes new speculative accumulation tracking and storage requirements.

QUESTION	ANSWER
What is a hazardous secondary material, and what is a hazardous secondary material generator?	<p>Hazardous secondary material, HSM, is secondary material such as spent material, by-product, or sludge that, when discarded, would characterize as hazardous waste under Title 40 of the Code of Federal Regulations Part 261.</p> <p>Hazardous secondary material generator means any person whose act or process produces HSM at the generating facility. Here, generating facility means all contiguous property owned, leased, or otherwise controlled by the HSM generator. 40 CFR 261.2(2)(ii) and 261.4(a)(23) state that a facility that collects HSM from other persons is not the HSM generator. This may be a solid waste transfer station per Oregon Revised Statute 459.005 and Oregon Administrative Rule 340-093-0030.</p>
What are the speculative accumulation requirements for HSM?	<p>HSM is not accumulated speculatively if it is recyclable under the existing exemptions and exclusions, meets legitimacy criteria, is stored protectively according to rule, and the generator documents that 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 during that calendar year. HSM must be managed in labeled storage units meeting the definition of contained and have the accumulation start date on the labels, in an inventory log, or tracked via another appropriate method.</p>
What are the legitimacy criteria?	<p>EPA defines legitimate recycling of HSM in 40 CFR 260.43. There are four things that need to be true for HSM recycling to be considered legitimate. These four things constitute the legitimacy criteria:</p> <ol style="list-style-type: none">1. When recycling HSM, it should help with the recycling process or make something useful during the recycling process.2. The recycling process must create something valuable.

	<ol style="list-style-type: none"> 3. Both the HSM generator and the recycler must treat HSM like it's valuable while it's in their possession. 4. The final result of the recycling process should be similar to something that's considered a legitimate product or a part of a legitimate product.
<p>What is a legitimate recycling determination?</p>	<p>HSM generators are responsible for determining if their HSM recycling meets all the legitimacy criteria and must maintain documentation of their legitimacy determination on-site, available for review. Compliance Inspectors may request and review this documentation. Documentation must include a written description of how the recycling meets the first three factors of the legitimacy criteria in 40 CFR 260.43(a) as modified by OAR 340-100-0043 and how factor four was considered in the determination of overall legitimacy for each recycling activity. Persons must maintain documentation for three years after the recycling activity has ceased. DEQ does not require a specific format for this documentation. DEQ has provided a form entitled "Documentation of Legitimate Recycling" with a template that can be used if helpful.</p>
<p>What is meant by "sham recycling"?</p>	<p>Recycling that doesn't meet the legitimacy criteria is considered sham recycling. Sham recycling can include use of a material that is ineffective or only marginally effective for the claimed use, used more than the amount necessary, or is not similar to how a raw material or commercial product is used, for instance, if the material contains unneeded toxic chemicals. HSM that is sham recycled is a solid waste and, therefore, a hazardous waste and would be subject to all pertinent hazardous waste regulations and requirements.</p>
<p>How has Oregon modified the definition of "contained"?</p>	<p>The federal definition of contained allows management in land-based units by all generators. "Land-based" simply means on or in the ground. Oregon removed this part of the definition to meet pre-existing state requirements. Only permitted transfer, storage, and disposal facilities may use land-based units.</p>

Why did Oregon adopt these provisions of the federal Definition of Solid Waste rule?

These regulations codify and provide a clear definition of legitimate recycling of hazardous secondary materials. Defining legitimate recycling is good for business and the environment and will result in conserving natural resources, reducing waste, saving energy, and reducing costs.

Where can I 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
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?

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