

Documentation of Legitimate Recycling of Hazardous Secondary Materials

Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation are required by 40 CFR 261.2(f).

Persons performing the recycling of hazardous secondary material (HSM) under the Generator Controlled exclusion of 40 CFR 261.4(a)(23) and/or the Transfer Based exclusion of 40 CFR 261.4(a)(24) must maintain documentation of their legitimacy determination on-site. Documentation must be maintained for 3 years after the recycling operation has ceased.

Documentation must be a written description of how the recycling meets all three factors in 40 CFR 260.43(a) and how the requirements of 40 CFR 260.43(b) were considered.

The template below is a possible format for documenting legitimacy to show recycling of hazardous secondary materials (HSM) addresses the three legitimacy factors in 40 CFR 260.43(a) and describes how the requirements of 40 CFR 260.43(b) were considered. A facility may choose to create its own format for documenting legitimate recycling.

Hazardous secondary material that is not legitimately recycled (meeting the Legitimacy Criteria described in 40 CFR 260.43) is discarded material that is a solid waste.

Suggested Template for the Legitimacy Documentation

Provide a brief narrative description describing how the hazardous secondary material (HSM) is recycled.

For example: Spent solvents are reclaimed in an on-site distillation system in order to remove the contaminant and return the solvent back to commercial-grade.

Next, check the box under each factor that most appropriately describes how the recycling meets the factor. Then add a brief narrative description explaining how the recycling meets the factor.

Factor 1:

Explain how the HSM provides a useful contribution:

- Contributes valuable ingredients to a product or intermediate
- Replaces a catalyst or carrier in the recycling process
- Is the source of a valuable constituent recovered in the recycling process
- Is recovered or regenerated by the recycling process
- Is used as an effective substitute for a commercial product

For example: Spent solvents reclaimed on site to commercial grade are "recovered or regenerated by the recycling process." Check the fourth line.

Provide a written description of how the hazardous secondary material provides a useful contribution to the recycling process or to a product or intermediate of the recycling process:

For example, the facility could identify what spent solvents are being regenerated in the recycling process.

Factor 2:

Describe how the product or intermediate made from the HSM is valuable:

- Sold to a 3rd party
- Used by the recycler or generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process

For example: Spent solvents reclaimed on site and then used by the generator are "used as an effective substitute for a commercial product." Check the second line.

Provide a written description of how the product or intermediate is valuable:

For example, the facility could identify the commercial product for which their reclaimed solvents are substituting.

Factor 3:

Describe how the HSM is managed as a valuable commodity:

- There is an analogous raw material and the HSM is managed, at a minimum, in a manner consistent with the raw material, or in an equally protective manner
- There is no analogous raw material and the HSM is contained per 15A NCAC 13A .0102(c)

For example: There are analogous raw materials to the spent solvents. Check the first line.

Provide a written description of how the hazardous secondary material is managed prior to being recycled:

For example, the facility should include a brief description of how the spent solvents are stored and managed prior to reclamation. The facility must manage their spent solvents before they are reclaimed in the same manner (or equally protective manner) as the original commercial solvents.

The requirements of 40 CFR 260.43(b) must be considered in making a determination as to the overall legitimacy of a specific recycling activity.

The product of the recycling process does not:

- Contain significant concentrations of any hazardous constituents found in appendix VIII of 40 CFR 261 that are not found in analogous products; or
 - Contain concentrations of hazardous constituents found in appendix VIII of 40 CFR 261 at levels that are significantly elevated from those found in analogous products, or
 - Exhibit a hazardous characteristic (as defined in 40 CFR 261 subpart C) that analogous products do not exhibit.
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- The product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate as outlined above but the recycling is still legitimate¹.

Provide a written description of how the product made with HSM is comparable to a legitimate product or intermediate:

¹In making a determination that a hazardous secondary material is legitimately recycled, persons must evaluate all factors and consider legitimacy as a whole. If, after careful evaluation of these considerations, the factor in 40 CFR 260.43(b) is not met, then this fact may be an indication that the material is not legitimately recycled. However, the factor in 40 CFR 260.43(b) does not have to be met for the recycling to be considered legitimate. In evaluating the extent to which this factor is met and in determining whether a process that does not meet this factor is still legitimate, persons can consider exposure from toxics in the product, the bioavailability of the toxics in the product and other relevant considerations.