

# Documentation of Legitimate Recycling

Persons performing the recycling of hazardous secondary material (HSM) under the generator-controlled exclusion of Title 40 of the Code of Federal Regulations (CFR) section 261.4(a)(23) must maintain documentation of their legitimacy determination on-site. Documentation needs to include a written description of how the recycling meets the first three factors in 40 CFR section 260.43(a) and how factor 4 in 40 CFR section 260.43(b) was considered in making a determination as to the overall legitimacy of a specific recycling activity. Documentation must be maintained for three (3) years after the recycling operation has ceased.

There is no specific format required for this documentation, but HSM generators may use this template to meet the requirements of 40 CFR section 261.4(a)(23)(ii)(E). This template can also be used to document a claim of legitimate recycling under any other recycling exclusion or exemption. Use as much space as necessary to thoroughly explain how each factor is met, adding additional lines as needed.

## Suggested Template for the Legitimacy Documentation

Provide a brief narrative description of how the HSM is recycled by the generator or recycler.

*For example, spent solvents are reclaimed in an on-site distillation system back to commercial-grade solvent.*

For factors 1-3, check the box under each factor that most appropriately describes how your recycling meets the factor. Add a brief narrative description explaining how the recycling meets each 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 used as an effective substitute for a commercial product?

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### **Factor 2:**

Describe how the product or intermediate is valuable:

- Sold to a third 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.

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**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 40 CFR section 260.10.

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For factor 4, check the boxes below that most appropriately describe how this factor was considered in making an overall legitimacy determination. If the product does not meet this factor, explain how this process is still legitimate. Add a brief narrative description explaining the relevant considerations in making that determination.

**Factor 4:**

Explain how the product of the recycling process is comparable to a legitimate product or intermediate:

There is an analogous product or intermediate:

The product does not contain significant concentrations of any hazardous constituents found in appendix VIII of part 261 that are not found in analogous products, OR

The product does not contain concentrations of any hazardous constituents found in appendix VIII of part 261 at levels that are significantly elevated from those found in analogous products, AND

The product of the recycling process does not exhibit a hazardous characteristic (as defined in part 261 subpart C) that analogous products do not exhibit.

If there is no analogous product:

The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications, OR

\_\_ The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused.

\_\_ The product of the recycling process has levels of hazardous constituents that are significant but the recycling is still legitimate:

\_\_ The recycling is still legitimate because there is a lack of exposure from the toxics in the product, OR

\_\_ The recycling is still legitimate because there is a lack of bioavailability of the toxics in the product, OR

\_\_ The recycling is still legitimate because of other relevant considerations that show the recycled product does not contain levels of hazardous constituents that pose a significant human health or environmental risk.

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