

**Subpart C—Rulemaking Petitions****§ 260.20 General.**

(a) Any person may petition the Administrator to modify or revoke any provision in parts 260 through 266, 268 and 273 of this chapter. This section sets forth general requirements which apply to all such petitions. Section 260.21 sets forth additional requirements for petitions to add a testing or analytical method to part 261, 264 or 265 of this chapter. Section 260.22 sets forth additional requirements for petitions to exclude a waste or waste-derived material at a particular facility from §261.3 of this chapter or the lists of hazardous wastes in subpart D of part 261 of this chapter. Section 260.23 sets forth additional requirements for petitions to amend part 273 of this chapter to include additional hazardous wastes or categories of hazardous waste as universal waste.

(b) Each petition must be submitted to the Administrator by certified mail and must include:

- (1) The petitioner's name and address;
- (2) A statement of the petitioner's interest in the proposed action;
- (3) A description of the proposed action, including (where appropriate) suggested regulatory language; and
- (4) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.

(c) The Administrator will make a tentative decision to grant or deny a petition and will publish notice of such tentative decision, either in the form of an advanced notice of proposed rulemaking, a proposed rule, or a tentative determination to deny the petition, in the FEDERAL REGISTER for written public comment.

(d) Upon the written request of any interested person, the Administrator may, at his discretion, hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The Administrator may in any case decide on his own motion to hold an informal public hearing.

(e) After evaluating all public comments the Administrator will make a final decision by publishing in the FEDERAL REGISTER a regulatory amendment or a denial of the petition.

[45 FR 33073, May 19, 1980, as amended at 51 FR 40636, Nov. 7, 1986; 57 FR 38564, Aug. 25, 1992; 60 FR 25540, May 11, 1995]

**§ 260.21 Petitions for equivalent testing or analytical methods.**

(a) Any person seeking to add a testing or analytical method to part 261, 264, or 265 of this chapter may petition for a regulatory amendment under this section and §260.20. To be successful, the person must demonstrate to the satisfaction of the Administrator that the proposed method is equal to or superior to the corresponding method prescribed in part 261, 264, or 265 of this chapter, in terms of its sensitivity, accuracy, and precision (i.e., reproducibility).

(b) Each petition must include, in addition to the information required by §260.20(b):

- (1) A full description of the proposed method, including all procedural steps and equipment used in the method;
- (2) A description of the types of wastes or waste matrices for which the proposed method may be used;
- (3) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in part 261, 264, or 265 of this chapter;
- (4) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and
- (5) A description of the quality control procedures necessary to ensure the sensitivity, accuracy and precision of the proposed method.

(c) After receiving a petition for an equivalent method, the Administrator may request any additional information on the proposed method which he may reasonably require to evaluate the method.

(d) If the Administrator amends the regulations to permit use of a new testing method, the method will be incorporated by reference in §260.11 and added to "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, U.S.

## Environmental Protection Agency

## § 260.22

Environmental Protection Agency, Office of Solid Waste, Washington, DC 20460.

[45 FR 33073, May 19, 1980, as amended at 49 FR 47391, Dec. 4, 1984; 70 FR 34561, June 14, 2005]

### **§ 260.22 Petitions to amend part 261 to exclude a waste produced at a particular facility.**

(a) Any person seeking to exclude a waste at a particular generating facility from the lists in subpart D of part 261 may petition for a regulatory amendment under this section and § 260.20. To be successful:

(1) The petitioner must demonstrate to the satisfaction of the Administrator that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous or an acutely hazardous waste; and

(2) Based on a complete application, the Administrator must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of subpart C of part 261.

(b) The procedures in this Section and § 260.20 may also be used to petition the Administrator for a regulatory amendment to exclude from § 261.3(a)(2)(ii) or (c), a waste which is described in these Sections and is either a waste listed in subpart D, or is derived from a waste listed in subpart D. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner must make the same demonstration as required by paragraph (a) of this section. Where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous wastes, his demonstration must be made with respect to the waste mixture as a whole; analyses must be conducted for not only those constituents for which the listed waste contained in the mixture was listed as hazardous, but also for factors (including additional constitu-

ents) that could cause the waste mixture to be a hazardous waste. A waste which is so excluded may still be a hazardous waste by operation of subpart C of part 261.

(c) If the waste is listed with codes "I", "C", "R", or "E", in subpart D,

(1) The petitioner must show that the waste does not exhibit the relevant characteristic for which the waste was listed as defined in § 261.21, § 261.22, § 261.23, or § 261.24 using any applicable methods prescribed therein. The petitioner also must show that the waste does not exhibit any of the other characteristics defined in § 261.21, § 261.22, § 261.23, or § 261.24 using any applicable methods prescribed therein;

(2) Based on a complete application, the Administrator must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of subpart C of part 261.

(d) If the waste is listed with code "T" in subpart D,

(1) The petitioner must demonstrate that the waste:

(i) Does not contain the constituent or constituents (as defined in Appendix VII of part 261 of this chapter) that caused the Administrator to list the waste; or

(ii) Although containing one or more of the hazardous constituents (as defined in appendix VII of part 261) that caused the Administrator to list the waste, does not meet the criterion of § 261.11(a)(3) when considering the factors used by the Administrator in § 261.11(a)(3) (i) through (xi) under which the waste was listed as hazardous; and

(2) Based on a complete application, the Administrator must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and