

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

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(3) The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in § 261.21, § 261.22, § 261.23, and § 261.24 using any applicable methods prescribed therein;

(4) A waste which is so excluded, however, still may be a hazardous waste by operation of subpart C of part 261.

(e) If the waste is listed with the code “H” in subpart D,

(1) The petitioner must demonstrate that the waste does not meet the criterion of § 261.11(a)(2); and

(2) Based on a complete application, the Administrator must determine, where he has a reasonable basis to believe that additional 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

(3) The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in § 261.21, § 261.22, § 261.23, and § 261.24 using any applicable methods prescribed therein;

(4) A waste which is so excluded, however, still may be a hazardous waste by operation of subpart C of part 261.

(f) [Reserved for listing radioactive wastes.]

(g) [Reserved for listing infectious wastes.]

(h) Demonstration samples must consist of enough representative samples, but in no case less than four samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.

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

(1) The name and address of the laboratory facility performing the sampling or tests of the waste;

(2) The names and qualifications of the persons sampling and testing the waste;

(3) The dates of sampling and testing;

(4) The location of the generating facility;

(5) A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such

processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration;

(6) A description of the waste and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration;

(7) Pertinent data on and discussion of the factors delineated in the respective criterion for listing a hazardous waste, where the demonstration is based on the factors in § 261.11(a)(3);

(8) A description of the methodologies and equipment used to obtain the representative samples;

(9) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization and preservation of the samples;

(10) A description of the tests performed (including results);

(11) The names and model numbers of the instruments used in performing the tests; and

(12) The following statement signed by the generator of the waste or his authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(j) After receiving a petition for an exclusion, the Administrator may request any additional information which he may reasonably require to evaluate the petition.

(k) An exclusion will only apply to the waste generated at the individual facility covered by the demonstration and will not apply to waste from any other facility.

(l) The Administrator may exclude only part of the waste for which the demonstration is submitted where he has reason to believe that variability of the waste justifies a partial exclusion.

[45 FR 33073, May 19, 1980, as amended at 50 FR 28742, July 15, 1985; 54 FR 27116, June 27, 1989; 58 FR 46049, Aug. 31, 1994; 70 FR 34561, June 14, 2005; 71 FR 40258, July 14, 2006]

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EDITORIAL NOTE: For information on the availability of a guidance manual for petitions to delist hazardous wastes, see 50 FR 21607, May 28, 1985.

§ 260.23 Petitions to amend 40 CFR part 273 to include additional hazardous wastes.

(a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of part 273 of this chapter may petition for a regulatory amendment under this section, 40 CFR 260.20, and subpart G of 40 CFR part 273.

(b) To be successful, the petitioner must demonstrate to the satisfaction of the Administrator that regulation under the universal waste regulations of 40 CFR part 273: Is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by 40 CFR 260.20(b). The petition should also address as many of the factors listed in 40 CFR 273.81 as are appropriate for the waste or category of waste addressed in the petition.

(c) The Administrator will grant or deny a petition using the factors listed in 40 CFR 273.81. The decision will be based on the weight of evidence showing that regulation under 40 CFR part 273 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(d) The Administrator may request additional information needed to evaluate the merits of the petition.

[60 FR 25540, May 11, 1995]

§ 260.30 Variances from classification as a solid waste.

In accordance with the standards and criteria in § 260.31 and the procedures in § 260.33, the Administrator may determine on a case-by-case basis that the following recycled materials are not solid wastes:

(a) Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in § 261.1(c)(8) of this chapter);

(b) Materials that are reclaimed and then reused within the original production process in which they were generated; and

(c) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

[50 FR 661, Jan. 4, 1985; 50 FR 14219, Apr. 11, 1985, as amended at 59 FR 48041, Sept. 19, 1994]

§ 260.31 Standards and criteria for variances from classification as a solid waste.

(a) The Administrator may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The Administrator's decision will be based on the following criteria:

(1) The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);

(2) The reason that the applicant has accumulated the material for one or more years without recycling 75 percent of the volume accumulated at the beginning of the year;

(3) The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(4) The extent to which the material is handled to minimize loss;

(5) Other relevant factors.

(b) The Administrator may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria: