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**Title 40 —Protection of Environment**  
**Chapter I —Environmental Protection Agency**  
**Subchapter R —Toxic Substances Control Act**

**Part 750** Procedures for Rulemaking Under Section 6 of the Toxic Substances  
Control Act

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**PART 750—PROCEDURES FOR RULEMAKING UNDER SECTION 6 OF  
THE TOXIC SUBSTANCES CONTROL ACT**

**Authority:** 15 U.S.C. 2605.

**Subpart A [Reserved]**

**Subpart B—Interim Procedural Rules for Manufacturing Exemptions**

**Source:** 43 FR 50905, Nov. 1, 1978, unless otherwise noted.

**§ 750.10 Applicability.**

Sections 750.10-750.15 apply to all rulemakings under authority of section 6(e)(3)(B) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e)(3)(B) with respect to petitions filed pursuant to § 750.11(a).

[81 FR 93636, Dec. 21, 2016]

## § 750.11 Filing of petitions for exemption.

- (a) **Who may file.** Any person seeking an exemption from the PCB manufacturing ban imposed by section 6(e)(3)(A) of TSCA may file a petition for exemption. Petitions must be submitted on an individual basis for each manufacturer or individual affected by the 1979 manufacturing ban.
- (b) **Where to file.** All petitions pertaining to:
  - (1) PCB use, which includes storage for use or reuse, manufacture, processing related to manufacture and use, and distribution in commerce related to use or processing for use, must be submitted to: OPPT Document Control Officer (7407T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
  - (2) PCB disposal, which includes cleanup, storage for disposal, processing related to disposal, distribution in commerce related to disposal or processing for disposal, and decontamination, must be submitted to: Document Control Officer, Office of Resource Conservation and Recovery (5305P), Environmental Protection Agency, 1200 Pennsylvania, NW., Washington, DC 20460-0001.
- (c) **Content of petition.** Each petition shall contain the following:
  - (1) Name, address and telephone number of petitioner.
  - (2) Description of PCB ban exemption requested, including items to be manufactured and nature of manufacturing process—such as smelting.
  - (3) Location(s) of manufacturing sites requiring exemption.
  - (4) Length of time requested for exemption (maximum length of exemption is 1 year).
  - (5) Amount of PCB chemical substance or PCB mixture (by pounds and/or volume) to be manufactured or used during requested exemption period and the manner of release of PCB's into the environment associated with such manufacture or use.
  - (6) The basis for the petitioner's contention that under section 6(e)(3)(B)(i) of TSCA “an unreasonable risk of injury to health or environment would not result” from the granting of his petition for exemption.
  - (7) The basis for the petitioner's contention that he meets the criterion of section 6(e)(3)(B)(ii) of TSCA concerning substitutes for PCB's.
  - (8) Quantification of the reasonably ascertainable economic consequences of denial of the petition for exemption from the 1979 manufacturing ban and an explanation of the manner of computation.
- (d) **Request for further information.** The Agency reserves the right to request further information as to each petition prior to or after publication of the notice of proposed rulemaking required by § 750.13.
- (e) **Renewal requests.**
  - (1) Any petitioner who has been granted an exemption under section 6(e)(3)(B) of TSCA, on or after May 25, 1994, and who seeks to renew that exemption without changing its terms, must submit a letter by certified mail to EPA requesting that the exemption be granted for the following year.

- (i) This letter must contain a certification by the petitioner that the type of activities, the procedures for handling the PCBs, the amount of PCBs handled, and any other aspect of the exemption have not changed from the original exemption petition request.
  - (ii) This letter must be received by EPA at least 6 months prior to the expiration of the existing exemption.
  - (iii) If a petitioner fails to make a submission or the submission is not timely under this section, the exemption will expire 1 year from the effective date of granting that exemption.
  - (iv) EPA will address a timely submission of a renewal request by rulemaking and either grant or deny the request.
- (2) Any petitioner who has been granted an exemption on or after May 25, 1994, and who seeks to increase the amount of PCBs handled or to change the type of activities, the procedures for handling the PCBs, and any other aspect of their existing exemption must submit a new exemption petition to EPA. The existing exemption activity may continue until the new submission is addressed by rulemaking, provided the activity conforms to the terms of the current exemption approved by EPA, and the petitioner complies with the conditions of paragraph (e)(1) of this section.
- (3) Any petitioner who has been granted a TSCA section 6(e)(3)(B) exemption in a rule prior to May 25, 1994, and who seeks to increase the amount of PCBs handled or to change the type of activities, the procedures for handling the PCBs, and any other aspect of their existing exemption must submit a new exemption petition to EPA. The existing exemption activity may continue until the new submission is addressed by rulemaking, provided the activity conforms to the terms of the original exemption approved by EPA.

[43 FR 50905, Nov. 1, 1978, as amended at 53 FR 12524, Apr. 15, 1988; 59 FR 16998, Apr. 11, 1994; 72 FR 57238, Oct. 9, 2007; 74 FR 30232, June 25, 2009]

## **§ 750.12 Consolidation of rulemakings.**

All petitions received pursuant to § 750.11(a) will be consolidated into one rulemaking with one informal hearing held on all petitions.

## **§ 750.13 Notice of proposed rulemaking.**

Rulemaking for PCB exemptions filed pursuant to § 750.11(a) shall begin with the publication of a notice of proposed rulemaking in the FEDERAL REGISTER. The notice shall state in summary form the required information described in § 750.11(c). Due to time constraints, the notice need not indicate what action EPA proposes to take on the exemption petitions.

[81 FR 93636, Dec. 21, 2016]

## **§ 750.14 Confidentiality.**

The Agency encourages the submission of nonconfidential information by petitioners and commenters. The Agency does not wish to have unnecessary restrictions on access to the rulemaking record. However, if a petitioner or commenter believes that he can only state his position through the use of information claimed to be confidential, he may submit it. Such information must be separately submitted for the rulemaking record and marked "confidential" by the submitter. For the information claimed to be confidential, the Agency will list only the date and the name and

address of the petitioner or commenter in the public file, noting that the petitioner or commenter has requested confidential treatment. The information claimed to be confidential will be placed in a confidential file. A petitioner must also file a nonconfidential petition with a nonconfidential summary of the confidential information to be placed in the public file. Similarly, a commenter must supply a nonconfidential summary of the information claimed to be confidential to be placed in the public file. Any information not marked as confidential will be placed in the public file. Information marked confidential will be treated in accordance with the procedures in part 2, subpart B of this title.

[43 FR 50905, Nov. 1, 1978. Redesignated at 81 FR 93636, Dec. 21, 2016]

## § 750.15 Final rule.

- (a) [Reserved]
- (b) EPA will grant or deny petitions under TSCA section 6(e)(3)(B) submitted pursuant to § 750.11.
- (c) In determining whether to grant an exemption to the PCB ban, the Agency shall apply the two standards enunciated in TSCA section 6(e)(3)(B).

[81 FR 93636, Dec. 21, 2016]

## Subpart C—Interim Procedural Rules for Processing and Distribution in Commerce Exemptions

**Source:** 44 FR 31560, Mar. 31, 1979, unless otherwise noted.

## § 750.30 Applicability.

Sections 750.30 through 750.35 apply to all rulemakings under authority of section 6(e)(3)(B) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e)(3)(B) with respect to petitions for PCB processing and distribution in commerce exemptions filed pursuant to § 750.31(a).

[81 FR 93636, Dec. 21, 2016]

## § 750.31 Filing of petitions for exemption.

- (a) **Who may file.** Any person seeking an exemption from the PCB processing and distribution in commerce prohibitions imposed by section 6(e)(3)(A)(ii) of TSCA may file a petition for exemption. Petitions must be submitted on an individual basis for each processor, distributor, seller or individual affected by the 1979 processing and distribution in commerce prohibitions, except as described in paragraphs (a) (1) through (9) of this section.
  - (1) **Processing and distribution in commerce of PCB-contaminated transformer dielectric fluid.** Persons who process or distribute in commerce dielectric fluid containing 50 ppm or greater PCB (but less than 500 ppm PCB) for use in PCB-Contaminated Transformers may submit a single consolidated petition on behalf of any number of petitioners. The name and address of each petitioner must be stated in the petition.
  - (2) **Contaminated substances and mixtures—processing.** Persons who process the same chemical substance or the same mixture containing 50 ppm or greater PCB as an impurity or contaminant may submit a consolidated petition if the chemical substance or mixture is processed for the same

use by each person represented by the petition. For example, persons who process a PCB-contaminated pigment into printing inks may combine their petitions into one petition. The name and address of each petitioner must be stated in the petition.

- (3) **Contaminated substances and mixtures—distribution in commerce.** Persons who distribute in commerce the same chemical substance or the same mixture containing 50 ppm or greater PCB as an impurity or contaminant may submit a consolidated petition if the chemical substance or mixture is distributed in commerce for a common use. Such a petition is not required to name each person who distributes in commerce the chemical substance or mixture.
- (4) **PCB capacitor distribution for purposes of repair.** Persons who distribute in commerce PCB capacitors for servicing (repair) of PCB Equipment may submit a single consolidated petition on behalf of any number of petitioners engaged in such distribution in commerce for purposes of repair. The name of each petitioner need not be stated in the petition.
- (5) **Small quantities for research and development.** Persons who process or distribute in commerce small quantities of PCBs for research and development may submit a single consolidated petition. The name and address of each petitioner must be stated in the petition.
- (6) **Microscopy.** Persons who process or distribute in commerce PCBs for use as a mounting medium in microscopy may submit a single consolidated petition on behalf of any number of petitioners. The name and address of each petitioner must be stated in the petition.
- (7) **Processing of PCB Articles into PCB Equipment.** A person who processes (incorporates) PCB Articles (such as small PCB Capacitors) into PCB Equipment may submit a petition on behalf of himself and all persons who further process or distribute in commerce PCB Equipment built by the petitioner. For example, a builder of motors who places small PCB Capacitors in the motors may submit a petition on behalf of all persons who process or incorporate motors built by the petitioner into other pieces of PCB Equipment and all those who sell the equipment. Such a petition is not required to identify the persons who distribute in commerce or further process the PCB Equipment. A separate petition must be filed, however, by each processor of PCB Articles into PCB Equipment.
- (8) **Processing of PCB Equipment into other PCB Equipment.** A person who processes (incorporates) PCB Equipment into other PCB Equipment may submit a petition on behalf of himself and all persons who further process or distribute in commerce PCB Equipment built by the petitioner. Such a petition is not required to identify the persons who distribute in commerce or further process the PCB Equipment. If a petition has been filed under paragraph (a)(7) of this section by the builder of the original PCB Equipment, no other petition is required.
- (9) **Distribution of PCB Equipment.** Distributors in commerce of PCB Equipment may submit a consolidated petition on behalf of persons who distribute in commerce PCB Equipment of one type (such as air conditioners). The petition is not required to name the persons who distribute in commerce the affected PCB Equipment.

(b) **Where to file.** All petitions pertaining to:

- (1) PCB use, which includes storage for use or reuse, manufacture, processing related to manufacture and use, and distribution in commerce related to use or processing for use, must be submitted to: OPPT Document Control Officer (7407T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- (2) PCB disposal, which includes cleanup, storage for disposal, processing related to disposal, distribution in commerce related to disposal or processing for disposal, and decontamination, must be submitted to: Document Control Officer, Office of Resource Conservation and Recovery (5305P), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0001.

(c) **Content of petition.** Each petition must contain the following:

- (1) Name, address and telephone number of petitioner. See also paragraphs (a) (1) through (9) of this section for additional identification requirements applicable to certain consolidated petitions.
- (2) Description of PCB processing or distribution in commerce exemption requested, including a description of the chemical substances, mixtures or items to be processed or distributed in commerce and, if processing is involved, the nature of the processing.
- (3) For processing petitions, location(s) of sites requiring exemption.
- (4) Length of time requested for exemption (maximum length of exemption is one year).
- (5) Estimated amount of PCBs (by pound and/or volume) to be processed, distributed in commerce, or used during requested exemption period and the manner of release of PCBs into the environment associated with such processing, distribution in commerce, or use. Where the PCB concentration is less than 500 ppm, both the total liquid volume and the total PCB volume must be provided.
- (6) The basis for the petitioner's contention that under section 6(e)(3)(B)(i) of TSCA "an unreasonable risk of injury to health or environment would not result" from the granting of the petition for exemption.
- (7) The basis for the petitioner's contention that under section 6(e)(3)(B)(ii) "good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for" the PCB.
- (8) Quantification of the reasonably ascertainable economic consequences of denying the petition for exemption and an explanation of the manner of computation.
- (9) In addition to the information in paragraphs (c)(1) through (c)(8) of this section, certain petitions must contain additional information as follows:
  - (i) Persons who process or distribute in commerce dielectric fluids containing 50 ppm or greater PCB for use in PCB Transformers, railroad transformers, or PCB electromagnets must also state the expected number of PCB Transformers, railroad transformers, or PCB electromagnets to be serviced under the exemption. In addition, a person must identify all the facilities which he owns or operates where he services PCB transformers, railroad transformers, or PCB electromagnets.
  - (ii) Persons filing petitions under paragraph (a)(1) of this section (Processing and Distribution in Commerce of PCB-Contaminated Transformer Dielectric Fluid) must also provide the expected number of PCB-Contaminated Transformers to be serviced under the requested exemption and the expected method of disposal of waste dielectric fluid. In addition, a person must identify all the facilities which he owns or operates where he services PCB-Contaminated Transformers. This information, as well as the information required by paragraphs (c)(1), (c)(3), and (c)(5) of this section, must be provided for each person represented by the petition. All other information may be provided on a group basis.

- (iii) Persons filing petitions under paragraphs (a)(2) (Contaminated Substances and Mixtures-Processing) and (a)(3) (Contaminated Substances and Mixtures-Distribution in Commerce) must also provide a justification for the class grouping selected and a description of the uses and the human and environmental exposure associated with each use of the PCB-contaminated chemical substance or mixture for which an exemption is sought. Information may be provided on a group basis, except that the information required by paragraphs (c)(1), (c)(3) and (c)(5) of this section, must be provided for each person represented by a petition under paragraph (a)(2) of this section.
- (iv) Persons filing petitions under paragraph (a)(4) of this section (PCB Capacitor Distribution for Purposes of Repair) must also provide an estimate of the expected total number of PCB Capacitors to be distributed in commerce under the requested exemption. All information may be provided on a group basis.
- (v) Persons filing petitions under paragraphs (a) (7) and (8) of this section (Processing of PCB Articles into PCB Equipment and Processing of PCB Equipment into Other PCB Equipment) must provide a description of each type of PCB Equipment (including the amount of PCBs by poundage and/or volume in the PCB Equipment) to be processed and/or distributed in commerce under the exemption, the number of each type of equipment expected to be processed and/or distributed in commerce, and the approximate number of distributors or further processors covered by the petition. All information may be provided on a group basis. However, in the case of a petition under paragraph (a)(7) of this section, the processor of PCB Articles into PCB Equipment must be identified in the petition. In the case of a petition under paragraph (a)(8) of this section, the processor of PCB Equipment who files the petition must be identified.
- (vi) Persons filing petitions under paragraph (a)(9) of this section (Distribution of PCB Equipment) must provide a description of each type of PCB Equipment (including the amount of PCBs by poundage and/or volume in the PCB Equipment) to be distributed in commerce under the exemption, the number of each type of equipment to be distributed in commerce, and the approximate number of distributors covered by the petition. All information may be provided on a group basis.
- (vii) Persons filing petitions under paragraphs (a) (5) and (6) of this section must provide the information required by paragraphs (c) (1) through (8) of this section for each petitioner named in the petition.

(d) EPA reserves the right to request further information as to each petition where necessary to determine whether the petition meets the statutory tests of section 6(e)(3)(B) of TSCA prior to or after publication of the notice of proposed rulemaking required by § 750.33 of these rules.

(e) ***Renewal requests.***

(1) Any petitioner who has been granted an exemption under 40 CFR 761.80, except paragraph (g) of 40 CFR 761.80, on or after May 25, 1994, and who seeks to renew that exemption without changing its terms, must submit a letter by certified mail to EPA requesting that the exemption be granted for the following year.

- (i) This letter must contain a certification by the petitioner that the type of activities, the procedures for handling the PCBs, the amount of PCBs handled, and any other aspect of the exemption have not changed from the original exemption petition request.

- (ii) This letter must be received by EPA at least 6 months prior to the expiration of the existing exemption.
  - (iii) If a petitioner fails to make a submission or the submission is not timely under this section, the exemption will expire 1 year from the effective date of granting that exemption.
  - (iv) EPA will address a timely submission of a renewal request by rulemaking and either grant or deny the request.
- (2) Any petitioner who has been granted an exemption on or after May 25, 1994, and who seeks to increase the amount of PCBs handled or to change the type of activities, the procedures for handling the PCBs, and any other aspect of their existing exemption must submit a new exemption petition to EPA. The existing exemption activity may continue until the new submission is addressed by rulemaking, provided the activity conforms to the terms of the current exemption approved by EPA, and the petitioner complies with the conditions of paragraph (e)(1) of this section.
- (3) Any petitioner who has been granted a TSCA section 6(e)(3)(B) exemption in a rule prior to May 25, 1994, and who seeks to increase the amount of PCBs handled or to change the type of activities, the procedures for handling the PCBs, and any other aspect of their existing exemption must submit a new exemption petition to EPA. The existing exemption activity may continue until the new submission is addressed by rulemaking, provided the activity conforms to the terms of the original exemption approved by EPA.

[44 FR 31560, Mar. 31, 1979, as amended at 53 FR 12524, Apr. 15, 1988; 59 FR 16998, Apr. 11, 1994; 63 FR 35436, June 29, 1998; 72 FR 57238, Oct. 9, 2007; 74 FR 30232, June 25, 2009]

### **§ 750.32 Consolidation of rulemaking.**

All petitions received pursuant to § 750.31(a) will be consolidated into one rulemaking with one informal hearing held on all petitions.

### **§ 750.33 Notice of proposed rulemaking.**

Rulemaking for PCB exemptions filed pursuant to § 750.31(a) shall begin with the publication of a notice of proposed rulemaking in the FEDERAL REGISTER. The notice shall state in summary form the required information described in § 750.31(c).

[81 FR 93636, Dec. 21, 2016]

### **§ 750.34 Confidentiality.**

EPA encourages the submission of non-confidential information by petitioners and commentors. EPA does not wish to have unnecessary restrictions on access to the rulemaking record. However, if a petitioner or commentor believes that he can only state his position through the use of information claimed to be confidential, he may submit it. Such information must be separately submitted for the rulemaking record and marked "confidential" by the submitter. For the information claimed to be confidential, EPA will list only the date and the name and address of the petitioner or commentor in the public file, noting that the petitioner or commentor has requested confidential treatment. The information claimed to be confidential will be placed in a confidential file. A petitioner must also file a non-confidential petition with a non-confidential summary of the confidential information to be placed in the public file. Similarly, a commentor must supply a non-confidential summary of the information claimed to be



confidential to be placed in the public file. Any information not marked as confidential will be placed in the public file. Information marked confidential will be treated in accordance with the procedures in part 2, subpart B of this title.

*[44 FR 31560, Mar. 31, 1979. Redesignated at 81 FR 93636, Dec. 21, 2016]*

### **§ 750.35 Final rule.**

- (a) [Reserved]
- (b) EPA will grant or deny petitions under TSCA section 6(e)(3)(B) submitted pursuant to § 750.31.
- (c) In determining whether to grant an exemption to the PCB ban, EPA will apply the two standards enunciated in TSCA section 6(e)(3)(B).

*[81 FR 93636, Dec. 21, 2016]*