

## § 766.35

## 40 CFR Ch. I (7-1-03 Edition)

the lowest LOQ possible, with appropriate QA/QC, or a well-designed bioassay with appropriate QA/QC or;

(ii) Process and reaction conditions of the chemical substance such that no HDDs/HDFs could be produced under those conditions;

(2) *Waivers may be granted if.* (i) A responsible company official certifies that the chemical substance is produced only in quantities of 100 kilograms or less per year, only for research and development purposes; or

(ii) In the judgement of EPA, the cost of testing would drive the chemical substance off the market, or prevent resumption of manufacture or import of the chemical substance, if it is not currently manufactured, and the chemical substance will be produced so that no unreasonable risk will occur due to its manufacture, import, processing, distribution, use, or disposal. (In this case, the manufacturer must submit to EPA all data supporting the determination.)

(iii) Waivers may be appropriately conditioned with respect to such factors as time and conditions of manufacture or use. The grade of decabromodiphenyl oxide produced by Dow Chemical Company (Dow) for the National Toxicology Program (NTP) bioassay on that chemical is excluded from the testing requirement under this part. Provided, however, that this exclusion will not apply if Dow fails to supply to EPA within 60 days of the effective date of this section evidence showing which grade was used for the NTP bioassay.

(b) *Timing.* Exclusion or waiver requests and detailed supporting data must be submitted to EPA within 60 days from the effective date of this part for persons manufacturing, importing or processing a chemical substance as of the date of promulgation, or 60 days prior to the date of resumption of manufacture or import for a chemical substance produced by a specific process if the chemical substance is not manufactured, imported or processed as of the date of promulgation.

(c) *Publication.* Within 10 days of receipt of any exclusion or waiver request, EPA will issue in the FEDERAL REGISTER a notice of such receipt. EPA will also issue a notice of its decision

on each exclusion or waiver request within 60 days of receipt.

(d) *Decision.* The EPA Director of the Office of Pollution Prevention and Toxics will make the decision to grant or deny waivers or exclusions.

### § 766.35 Reporting requirements.

(a) *Letters of intent, exemption applications, and protocols—(1) Letters of Intent.*

(i) Persons who have manufactured or imported chemical substances listed under § 766.25 between January 1, 1984, and the effective date of this part are required to submit under § 790.45 of this chapter a letter of intent to test or an exemption application. These letters must be submitted no later than September 3, 1987.

(ii) Persons who commence manufacture, import or processing of a chemical substance listed under § 766.25 that has not been manufactured, imported or processed between January 1, 1984 and the effective date of this part must submit under § 790.45 of this chapter, within 60 days after the commencement of manufacture, import, or processing of the chemical substance, a letter of intent to test or an exemption application.

(iii) Persons who commence manufacture, import or processing of a chemical substance listed under § 766.25 between the effective date of this part and the end of the reimbursement period for that particular chemical substance produced by a specific process must submit under § 790.45 of this chapter, within 60 days after the commencement of manufacture, import or processing of the chemical substance, a letter of intent to test or an exemption application.

(2) *Protocols.* (i) Each person who is manufacturing or processing a chemical substance listed in § 766.25 as of the effective date of this part who submits a notice of intent to test under § 766.35(a)(1) must submit a protocol for the test as follows:

(A) The protocols for each chlorinated chemical substance produced by each process to be tested must be submitted to EPA no later than 12 months after the effective date of this part.

(B) The protocol for each brominated chemical substance produced by each

**Environmental Protection Agency**

**§ 766.35**

process to be tested must be submitted to EPA no later than 24 months after the effective date of this part except for the following chemicals.

(1) The deadline for submitting the protocols for tetrabromobisphenol-A (CAS No. 79-94-7); 2,4,6 tribromophenol (CAS No. 118-79-6); decabromodiphenyloxide (CAS No. 1163-19-5); and 1,2-bis(tribromophenoxy)-ethane (CAS No. 37853-59-1) is January 31, 1991.

(2) The deadline for submitting protocols for octabromodiphenyloxide (CAS No. 32536-52-0) and allyl ether of tetrabromobisphenol-A (CAS No. 25327-89-3) is January 31, 1991.

(3) The deadline for submitting protocols for pentabromodiphenyloxide (CAS No. 32534-81-9) is February 6, 1995. The

deadline for submitting tetrabromobisphenol-A-bisethoxylate (CAS No. 4126-45-2) is January 31, 1991.

(4) The deadline for submitting protocols for 3,4',5-tribromosalicylanilide (CAS No. 87-10-5) is September 5, 1990.

(ii) For chemical substances produced by a specific process not manufactured or processed as of the effective date of this part, a person who begins manufacture and submits a notice of intent to test must submit protocols for the test as follows:

(A) Except as noted for the submitter and substance specified in the following table, protocols for testing must be submitted 12 months after manufacture or importation begins for chlorinated chemical substances.

CAS No.	Submitter	Chemical	Due date
118-75-2	Rhone-Poulenc .....	2,3,5,6-tetrachloro-2,5-cyclohexaniene-1,4-dione .....	March 4, 1994

(B) Protocols for testing must be submitted 24 months after manufacture begins for brominated chemical substances.

(iii) For persons who have been granted exemptions, waivers or exclusions from testing, protocols must be submitted 12 months after expiration of the exemption, waiver or exclusion for chlorinated chemical substances, and 24 months after expiration of the exemption, waiver or exclusion for brominated chemical substances.

(b) *Information that must be submitted to EPA.* (1) Persons who manufacture or import a chemical substance listed under § 766.25 must report no later than October 5, 1987 or 90 days after the person first manufactures or imports the chemical substance, whichever is later, the results of all existing test data which show that chemical substance has been tested for the presence of HDDs/HDFs.

(2) Any manufacturer or importer of a chemical substance listed in § 766.25 in possession of unpublished health and safety studies on HDDs/HDFs is re-

quired to submit copies of such studies to EPA no later than October 5, 1987 or 90 days after the person first manufactures or imports the chemical substance, whichever is later. The following provisions of part 716 of this chapter apply to submission of these studies: §§ 716.3, 716.10(a) (1) and (4); 716.20(a) (1), (2), (3), (4), (7), (8) and (10); 716.25; 716.30; 716.35(a) (1), (2), and (4) [if applicable]; 716.35 (b) and (c); 716.40 (a) and (b); 716.50; 716.55; and 716.60(a)(2).

(3) No later than October 5, 1987 or 90 days after the person first manufactures or imports the substance listed in § 766.25, any manufacturer or importer of a chemical substance listed in § 766.25 must submit records required to be held under part 717 of this chapter on any HDDs/HDFs.

(4) *Test results.* (i) Test results must be submitted to EPA not later than 270 days after EPA's transmission of comments or 180 days after a final protocol is submitted to EPA, whichever is shorter, except as noted for the submitters and substances specified in the following table:

CAS No.	Submitter	Chemical	Due Date	Effective Date
79-94-7	Great Lakes	Tetrabromobisphenol-A	May 26, 1992	May 28, 1993
79-94-7	Ethyl	Tetrabromobisphenol-A	August 10, 1992	May 28, 1993

CAS No.	Submitter	Chemical	Due Date	Effective Date
79-94-7	Ameribrom	Tetrabromobisphenol-A	April 15, 1994	September 29, 1995
87-10-5	Pfister	3,4',5-tribromosalicylanilide	45 days after protocol approval	May 28, 1993
118-75-2	Rhone-Poulenc Inc.	2,3,5,6-tetrachloro-2,5-cyclohexadiene-1,4-dione	July 5, 1996	June 30, 1997
118-79-6	Great Lakes	2,4,6-Tribromophenol	May 26, 1992	May 28, 1993
1163-19-5	Ameribrom	Decabromodiphenyloxide	April 15, 1994	September 29, 1995
1163-19-5	Ethyl	Decabromodiphenyloxide	May 26, 1992	May 28, 1993
1163-19-5	Great Lakes	Decabromodiphenyloxide	May 26, 1992	May 28, 1993
4162-45-2	Great Lakes	Tetrabromobisphenol-A-bisethoxylate	June 2, 1993	September 8, 1994
25327-89-3	Great Lakes	Allyl Ether of Tetrabromobisphenol-A	August 10, 1992	May 28, 1993
32534-81-9	Great Lakes	Pentabromodiphenyloxide	March 22, 1993	September 8, 1994
32534-81-9	Akzo Chemicals Inc.	Pentabromodiphenyloxide	February 6, 1995	September 29, 1995
32534-81-9	Ameribrom	Pentabromodiphenyloxide	March 22, 1993	September 8, 1994
32536-52-0	Ameribrom	Octabromodiphenyloxide	January 8, 1993	September 29, 1995
32536-52-0	Ethyl	Octabromodiphenyloxide	May 15, 1994	May 28, 1993
32536-52-0	Great Lakes	Octabromodiphenyloxide	May 26, 1992	May 28, 1993
37853-59-1	Great Lakes	1,2-bis(tribromophenoxy)ethane	January 24, 1995	September 29, 1995

(ii) For purposes of reporting test results to EPA, and for further reporting triggered by a positive test result under § 766.35(c), a positive test result is defined at § 766.3.

(iii) Reporting of test results must follow procedures set out in part 790 of this chapter, except as modified in this part.

(c) *Information required to be submitted to EPA after submission of a positive test result.* (1) Any person who submits a positive test result for a specific chemical substance listed under § 766.25 must submit to EPA no later than 90 days after the date of submission of the positive test result the following:

(i) A completed form (EPA 7710-51) for that chemical substance. The form and instructions are available from the Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. One form must be submitted for each chemical substance for which a positive test result has been submitted.

(ii) Health and safety studies for the chemical substance for which a positive test result has been reported. The following provisions of part 716 of this chapter apply to submission of these studies: §§ 716.3; 716.10 (a) (1), (2), (3) and (4); 716.20; 716.25; 716.30; 716.35(a) (1), (2), and (4), [if applicable]; 716.35 (b) and (c); 716.40 (a) and (b); 716.50; 716.55; 716.60(a)(2).

(iii) Copies of records on the chemical substances required to be held under part 717 of this chapter.

(2) If a positive test result on a chemical substance is received from one person but not from others, EPA may issue a notice in the FEDERAL REGISTER listing that chemical substance and requiring any person manufacturing, importing or processing that chemical substance who has not submitted a positive test result to submit the information required in Part II of EPA Form 7710-51. Such a notice will be published only if EPA needs additional process data to make a determination of unreasonable risk.

(d)-(e) [Reserved]

**Environmental Protection Agency**

**§ 766.38**

(f) *Effective date.* (1) The effective date of this final rule is July 6, 1987, except for paragraphs (a)(2)(i)(B) introductory text, (a)(2)(i)(B)(1), (a)(2)(i)(B)(2), (a)(2)(i)(B)(3), (a)(2)(i)(B)(4), the table in paragraph (a)(2)(ii)(A), and the table in paragraph (b)(4)(i) of this section.

(2) The effective date for paragraph (a)(2)(i)(B) introductory text, (a)(2)(i)(B)(1), (a)(2)(i)(B)(2), and (a)(2)(i)(B)(4), is May 21, 1991. The effective date of paragraphs (a)(2)(i)(B)(3), and the table in paragraph (a)(2)(ii)(A) is September 29, 1995. The effective date of paragraph (b)(4)(i) introductory text is May 28, 1993, and the effective date of the entries in the table in paragraph (b)(4)(i) is shown in the effective dates column of the table.

(3) The guidelines and other test methods cited in this rule are referenced as they exist on the effective date of the final rule.

[52 FR 21437, June 5, 1987, as amended at 56 FR 23229, May 21, 1991; 57 FR 24960, June 12, 1992; 58 FR 30991, May 28, 1993, 58 FR 34205, June 23, 1993; 59 FR 46356, Sept. 8, 1994; 60 FR 31922, June 19, 1995; 60 FR 50433, Sept. 29, 1995; 60 FR 56955, Nov. 13, 1995; 62 FR 35105, June 30, 1997]

**§ 766.38 Reporting on precursor chemical substances.**

(a) *Identification of precursor chemical substances.* Precursor chemical substances are produced under conditions that will not yield HDDs and HDFs, but their molecular structure is conducive to HDD/HDF formation under favorable reaction conditions when they are used to produce other chemicals or products. The following precursor chemical substances are identified by Chemical Abstract Service (CAS) number and name.

CAS No.	Chemical name
85-22-3 ...	Pentabromoethylbenzene.
87-61-6 ...	1,2,3-Trichlorobenzene.
87-84-3 ...	1,2,3,4,5-Pentabromo-6-chloro-cyclohexane.
89-61-2 ...	1,4-Dichloro-2-nitrobenzene.
89-64-5 ...	4-Chloro-2-nitrophenol.
89-69-0 ...	2,4,5-Trichloronitrobenzene.

CAS No.	Chemical name
92-04-6 ...	2-Chloro-4-phenylphenol.
94-74-6 ...	4-Chloro-o-toloxo acetic acid.
94-81-5 ...	4-(2-Methyl-4-chlorophenoxy) butyric acid.
95-50-1 ...	o-Dichlorobenzene.
95-56-7 ...	o-Bromophenol.
95-57-8 ...	o-Chlorophenol.
95-88-5 ...	4-Chlororesorcinol.
95-94-3 ...	1,2,4,5-Tetrachlorobenzene.
97-50-7 ...	5-Chloro-2,4-dimethoxyaniline.
99-30-9 ...	2,6-Dichloro-4-nitroaniline.
99-54-7 ...	1,2-Dichloro-4-nitrobenzene.
106-46-7	p-Dichlorobenzene.
108-70-3	1,3,5-Trichlorobenzene.
108-86-1	Bromobenzene.
108-90-7	Chlorobenzene.
117-18-0	1,2,4,5-Tetrachloro-3-nitrobenzene.
120-82-1	1,2,4-Trichlorobenzene.
348-51-6	o-Chlorofluorobenzene.
350-30-1	3-Chloro-4-fluoronitrobenzene.
615-67-8	Chlorohydroquinone.
626-39-1	1,3,5-Tribromobenzene.
827-94-1	2,6-Dibromo-4-nitroaniline.

(b) *Persons required to report.* All persons who manufacture or import a chemical product produced using any of the chemical substances listed in paragraph (a) of this section as feedstocks or intermediates must report no later than September 29, 1987. Small manufacturers and those manufacturers and importers who produce the precursor chemical substances in quantities of 100 kilograms or less per year only for research and development purposes are not required to report under this section

(c) *Data to be reported.* Manufacturers and importers of chemical products made from precursor chemical substances identified in paragraph (a) of this section must report process and reaction condition data on Part II of EPA Form 7710-51 for each chemical product. A separate EPA Form 7710-51 must be submitted for each chemical product reported, and the precursor chemical substance used must be identified. All forms must be submitted to EPA no later than September 29, 1987.

[52 FR 21437, June 5, 1987, as amended at 60 FR 31922, June 19, 1995]

**PARTS 767-789 [Reserved]**