

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 750.30–750.41 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) of this part.

§ 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 must be submitted to the following location: OPPT Document Control Officer (7407), East Tower, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(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]

§ 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 processing and distribution in commerce exemptions filed pursuant to § 750.31(a) will begin with the publication of a Notice of Proposed Rulemaking in the FEDERAL REGISTER. Each notice will contain:

(a) A summary of the information required in § 750.31(d);

(b) A statement of the time and place at which the informal hearing required by section 6(c)(2)(C) of TSCA shall begin, or, to the extent these are not specified, a statement that they will be specified later in a separate FEDERAL REGISTER notice provided that FEDERAL REGISTER notice of the date and city at which any informal hearing shall begin will be given at least 30 days in advance;

(c) A statement identifying the place at which the official record of the rulemaking is located, the hours during which it will be open for public inspection, the documents contained in it as of the date the Notice of Proposed

Rulemaking was issued, and a statement of the approximate times at which additional materials such as public comments, hearing transcripts, and Agency studies in progress will be added to the record. If any material other than public comments or material generated by a hearing is added to the record after publication of the notice required by this action, and notice of its future addition was not given at the time of that initial publication, a separate FEDERAL REGISTER notice announcing its addition to the record and inviting comment will be published;

(d) The due date for public comments, which will be (1) 30 days after publication of the notice of proposed rulemaking for main comments and (2) one week after the informal hearing for reply comments;

(e) The name, address, and office telephone number of the Record Clerk and the Hearing Clerk for the rulemaking in question; and

(f) A nonbinding target date for issuing the final rule.

§ 750.34 Record.

(a) No later than the date of proposal of a rule subject to this subpart, a rulemaking record for that rule will be established. It will consist of a separate identified filing space containing:

(1) All documents required by § 750.31(d);

(2) All public comments timely received;

(3) All public hearing transcripts;

(4) All material received during an informal hearing and accepted for the record of that hearing; and

(5) Any other information that the Assistant Administrator for Prevention, Pesticides and Toxic Substances considers to be relevant to such rule and that the Assistant Administrator identified, on or before the date of the promulgation of the rule, in a notice published in the FEDERAL REGISTER.

(b) All material in the record will be appropriately indexed. Each record will be available for public inspection during normal EPA business hours. Appropriate arrangements allowing members of the public to copy record materials that do not risk the permanent loss of such materials will be made. All material required to be included in the