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(j) *Enforcement.* (1) Failure to comply with any provision of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(2) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(3) Failure or refusal to permit entry or inspection as required by section 11 of the Act (15 U.S.C. 2610) is a violation of section 15 of the Act (15 U.S.C. 2614).

(4) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(k) *Inspections.* EPA will conduct inspections under section 11 of the Act (15 U.S.C. 2610) to ensure compliance with this section.

[55 FR 240, Jan. 3, 1990, as amended at 59 FR 42773, Aug. 19, 1994]

**PART 750—PROCEDURES FOR RULE-
MAKING UNDER SECTION 6 OF
THE TOXIC SUBSTANCES CON-
TROL ACT**

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Under Section 6 of the Toxic Sub-
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AUTHORITY: 15 U.S.C. 2605.

**Subpart A—Procedures for Rule-
making Under Section 6 of the
Toxic Substances Control Act**

SOURCE: 42 FR 61259, Dec. 2, 1977, unless otherwise noted.

§ 750.1 Applicability.

This part applies to all rulemakings under authority of section 6 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605.

§ 750.2 Notice of proposed rulemaking.

(a) Each rulemaking becomes subject to this part with the publication of a Notice of Proposed Rulemaking in the FEDERAL REGISTER. A proceeding under section 6 of the Toxic Substances Control Act may begin, as appropriate, with the publication in the FEDERAL REGISTER of a Notice of Proposed Rulemaking, an Advance Notice of Proposed Rulemaking, or notice of other action, such as a formal regulatory investigation designed to lead to issuance of rules within a reasonable time.

(b) Each such notice shall contain:

(1) A draft finding that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use or disposal of the chemical substance(s) or mixture(s) at issue, or any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment.

(2) A Notice of Proposed Rulemaking stating with particularity the reasons

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for the proposed rule together with a statement why the proposed rule protects adequately against the risk(s) involved using the least burdensome requirements authorized by TSCA.

(3) Either the draft text of the proposed rule (which may include alternative approaches among which a final choice has not yet been made) or a description of the approaches and provisions being considered for inclusion in the rule, or some combination of the above.

(4) Except for rules published under authority of section 6(e), a draft statement with respect to:

(i) The effects of the substance(s) or mixture(s) at issue on health and the magnitude of the exposure of human beings to such substance(s) or mixture(s);

(ii) The effects of the substance(s) or mixture(s) at issue on the environment and the magnitude of the exposure of the environment to such substance(s) or mixture(s).

(iii) The benefits of the substance(s) or mixture(s) at issue for various uses and the availability of substitutes for such uses; and

(iv) The reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

(v) Major impacts of alternatives to the proposed rule shall also be analyzed.

(5) In cases where the administrator, in his or her discretion, determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under a Federal law (or laws) other than TSCA administered in whole or in part by the Administrator, a finding that it is in the public interest to proceed against such risk under TSCA. Any such finding shall be accompanied by a brief statement discussing:

(i) All relevant aspects of the risk;

(ii) A comparison of the estimated costs of complying with actions taken under TSCA and under such other law (or laws); and

(iii) The relative efficiency of actions under TSCA and under such other law

(or laws) to protect against risk of injury.

Two or more or all of the statements required above may be combined in the same narrative for efficiency of exposition as long as each of the required points is discussed. Any statement required by this paragraph may reference other documents which are not published in the FEDERAL REGISTER. All such referenced documents shall be included in the rulemaking record. Either the statements required by this paragraph or the documents they reference shall contain a discussion of the factual, analytical, policy and legal considerations behind the agency decision to issue the proposed rule in the form chosen. A brief summary of these considerations shall be included in the preamble in any case. All factual materials and each analytical methodology seriously considered shall be fully disclosed. Significant areas of uncertainty known to the Agency under each heading shall be identified, and the manner in which the Agency intends to deal with them shall be specified.

(c) In addition to the material required under paragraph (b) of this section, each notice of proposed rulemaking shall contain:

(1) 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 shall be given at least 30 days in advance;

(2) 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 section, and notice of its future

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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 shall be published;

(3) The due date for public comments, which shall be at least two weeks prior to the informal hearing for main comments and no more than two weeks after the informal hearing for reply comments;

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

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

[42 FR 61259, Dec. 1977, as amended at 54 FR 21623, May 19, 1989]

§ 750.3 Record.

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

(1) All documents required by § 750.2(b);

(2) All documents cited in the documents required by § 750.2(b);

(3) All public comments timely received;

(4) All public hearing transcripts;

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

(6) Any other information which the Administrator considers to be relevant to such rule and which the Administrator identified, on or before the date of the promulgation of the rule, in a notice published in the FEDERAL REGISTER.

All material in the record shall be appropriately indexed. Each record shall be available for public inspection during normal Agency business hours. Appropriate arrangements allowing members of the public to copy record materials that do not risk the permanent loss of such materials shall be made. All material required to be included in the record shall be added to the record as soon as feasible after its receipt by the Agency.

(b) The Record and Hearing Clerk for each rulemaking shall be responsible for Agency compliance with the re-

quirements of paragraph (a) of this section.

§ 750.4 Public comments.

(a) Main comments shall be post-marked or received no later than the time specified in the Notice of Proposed Rulemaking and shall contain all comments on and criticisms of that Notice by the commenting person, based on information which is or reasonably could have been available to that person at the time.

(b) Reply comments shall be post-marked or received no later than two weeks after the close of all informal hearings on the proposed rule and shall be restricted to comments on:

(1) Other comments;

(2) Material in the hearing record; and

(3) Material which was not and could not reasonably have been available to the commenting party a sufficient time before main comments were due.

(c) Extensions of the time for filing comments may be granted in writing by the Record and Hearing Clerk. Application for an extension shall be made in writing. Comments submitted after the comment period and all extensions of it have expired need not be added to the rulemaking record and need not be considered in decisions concerning the rule. Unless the Notice of Proposed Rulemaking states otherwise, four copies of all comments shall be submitted.

§ 750.5 Subpoenas.

(a) Where necessary, subpoenas requiring the production of documentary material, the attendance of persons at the hearing, or responses to written questions may be issued. Subpoenas may be issued either upon request as provided in paragraph (b) of this section or by EPA on its own motion.

(b) All subpoena requests shall be in writing. Hearing participants may request the issuance of subpoenas as follows:

(1) Subpoenas for the attendance of persons, and for the production of documents or responses to questions at the legislative hearing may be requested at any time up to the deadline for filing main comments.

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(2) Subpoenas for production of documents or answers to questions after the legislative hearing may be requested at any time between the beginning of the legislative hearing and the deadline for submitting reply comments.

(c) EPA will rule on all subpoena requests filed under paragraph (b)(1) of this section no later than the beginning of the legislative hearing. Such requests may be granted, denied, or deferred. EPA will rule on all subpoena requests filed under paragraph (b)(2) of this section and all deferred subpoena requests filed under paragraph (b)(1) of this section no later than the promulgation of the final rule. Such requests shall be either granted or denied.

§ 750.6 Participation in informal hearing.

(a) Each person or organization desiring to participate in the informal hearing required by section 6(c)(2)(C) of TSCA shall file a written request to so participate with the Record and Hearing Clerk which shall be postmarked or received no later than three weeks prior to the scheduled start of such hearing. The request shall include:

(1) A brief statement of the interest of the person or organization in the proceeding;

(2) A brief outline of the points to be addressed;

(3) An estimate of the time required; and

(4) If the request comes from an organization, a nonbinding list of the persons to take part in the presentation. Organizations are requested to bring with them, to the extent possible, employees with individual expertise in and responsibility for each of the areas to be addressed. No organization not filing main comments in the rulemaking will be allowed to participate at the hearing, unless a waiver of this requirement is granted in writing by the Record and Hearing Clerk or the organization is appearing at the request of EPA or under subpoena.

(b) No later than one week prior to the start of the hearing, the Record and Hearing Clerk shall make a hearing schedule publicly available and mail or deliver it to each of the persons who requested to appear at the hearing. This schedule shall be subject to

change during the course of the hearing at the discretion of those presiding over it.

(c) Opening statements should be brief, and restricted either to points that could not have been made in main comments, or to emphasizing points which are made in main comments, but which the participant believes can be more forcefully urged in the hearing context.

§ 750.7 Conduct of legislative hearing.

(a) A panel of EPA employees shall preside at each hearing conducted under section 6(c)(2)(C) of TSCA. In appropriate cases other Executive Branch employees may also sit with and assist the panel. The membership of the panel may change as different topics arise during the hearing. In general, the panel membership will consist of agency employees with special responsibility for the final rule or special expertise in the topics under discussion. One member of the panel shall be named to chair the proceedings and shall attend throughout the hearing, unless unavoidably prevented by sickness or similar personal circumstances.

(b) The panel may question any individual or group participating in the hearing on any subject relating to the rulemaking. Cross-examination by others will normally not be permitted at this stage. It may be granted in compelling circumstances at the sole discretion of the hearing panel. However, persons in the hearing audience may submit questions in writing for the hearing panel to ask the participants, and the hearing panel may, at their discretion, ask these questions.

(c) Participants in the hearing may submit additional material for the hearing record and shall submit such additional material as the hearing panel may request. All such submissions shall become part of the record of the hearing. A verbatim transcript of the hearing shall be made.

§ 750.8 Cross-examination.

(a) After the close of the legislative hearing conducted under § 750.7, any participant in that hearing may submit a written request for cross-examination. The request shall be received by

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EPA within one week after a full transcript of the legislative hearing becomes available and shall specify:

(1) The disputed issue(s) of material fact as to which cross-examination is requested. This shall include an explanation of why the questions at issue are “factual”, rather than of an analytical or policy nature, the extent to which they are in “dispute” in the light of the record made thus far, and the extent to which and why they can reasonably be considered “material” to the decision on the final rule; and

(2) The person(s) the participant desires to cross-examine, and an estimate of the time necessary. This shall include a statement by the cross-examination requested can be expected to result in “full and true disclosure” resolving the issue of material fact involved.

(b) Within one week after receipt of all requests for cross-examination under paragraph (a) of this section the hearing panel shall rule on them. The ruling shall be served by the Record and Hearing Clerk on all participants who have requested cross-examination and shall be inserted in the record. Written notice of the ruling shall be given to all persons requesting cross-examination and all persons to be cross-examined. The ruling shall specify:

(1) The issues as to which cross-examination is granted,

(2) The persons to be cross-examined on each issue,

(3) The persons to be allowed to conduct cross-examination, and

(4) Time limits for the examination of each witness by each cross-examiner.

In issuing this ruling, the panel may determine that one or more participants who have requested cross-examination have the same or similar interests and should be required to choose a single representative for purposes of cross-examination. In such a case the order shall simply assign time for cross-examination by that single representative without identifying the representative further. Subpoenas for witnesses may be issued where necessary.

(c) Within one week after the insertion into the record of the ruling under

paragraph (b) of this section, the hearing at which the cross-examination will be conducted shall commence. One or more members of the original panel shall preside for the Agency. The panel shall have authority to conduct cross-examination on behalf of any participant, although as a general rule this right will not be exercised. The panel shall also have authority to modify the governing ruling in any respect and to make new rulings on group representation under section 6(c)(3)(C) of TSCA. A verbatim transcript of the hearing shall be made.

(d)(1) No later than the time set for requesting cross-examination, a hearing participant may request that other alternative methods of clarifying the record (such as informal conferences or the submittal of additional information) be used. Such requests may be submitted either in lieu of cross-examination requests, or in conjunction with them.

(2) The panel in passing on a cross-examination request may as a precondition to ruling on its merits require that alternative means of clarifying the record be used whether or not that has been requested under paragraph (d)(1) of this section. In such a case the results of the use of such alternative means shall be made available to the person requesting cross-examination of a one-week comment period, and the panel shall make a final ruling on cross-examination within one week thereafter.

(e) Waivers or extensions of any deadline in this section applicable to persons other than EPA may be granted on the record of the hearing by the person chairing it or in writing by the Record and Hearing Clerk.

§ 750.9 Final rule.

(a) As soon as feasible after the deadline for submittal of reply comments, the Agency shall issue a final rule. Final versions of the statements required by paragraph (b) of § 750.2 shall be published in the FEDERAL REGISTER together with the final rule. The Agency shall also publish at that time:

(1) A list of all material added to the record (other than public comments and material from the hearing record)

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which has not previously been listed in a FEDERAL REGISTER document, and

- (2) The effective date of the rule.
- (b) [Reserved]

APPENDIX A TO SUBPART A OF PART 750

To assist in reading the regulations set forth above, this appendix sets forth the principal stages through which rules promulgated under section 6 of TSCA will pass.

The second column gives the relationship that one date bears to another whenever that relationship is specified in the regulations, and cites the governing provision. The third column contains estimates of the time that a typical rulemaking is likely to require to reach and complete each stage of these proceedings. In drawing up this third column, we have assumed that 60 days will be allowed for the submission of main comments; that the legislative phase of the informal hearing will take two weeks, and that cross-examination will take four days. Since these are only estimates, in any given rulemaking shorter or longer times may actually be required for each of these stages.

Stage	Timing in relation to other stages	Estimated total time elapsed (days)
Proposed regulation	Sec. 750.2.	
Requests to participate in informal hearing due.	3 weeks prior to beginning of hearing (§ 750.2(a)).	53
Main comments due	2 weeks prior to beginning of hearing (§ 750.2(c)(3)).	60
Begin informal hearing.	74
End legislative hearing.	88
Requests for cross-examination due.	1 week after end of legislative hearing (§ 750.8(a)).	95
Ruling on cross-examination requests.	1 week after requests are due (§ 750.8(b)).	102
Cross-examination begins.	1 week after ruling on cross-examination requests (§ 750.8(c)).	109
Cross-examination ends; informal hearing ends.	113
Reply comments due	2 weeks after end of informal hearing (§ 750.4(b)).	127

Subpart B—Interim Procedural Rules for Manufacturing Exemptions

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

§ 750.10 Applicability.

Sections 750.10–750.21 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) of this part.

§ 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)

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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, pro-

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vided 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. The notice shall also be subject to § 750.2(c) with the exceptions (1) that the clause “in addition to the material required under paragraph (b)” is eliminated; and (2) that § 750.2(c)(3) is changed to read:

The due date for public comments, which shall be (1) thirty days after publication of the notice of proposed rulemaking for main comments and (2) one week after the close of the informal hearing for reply comments.

[43 FR 50905, Nov. 1, 1978, as amended at 59 FR 16998, Apr. 11, 1994]

§ 750.14 Record.

Section 750.3 shall be applicable with the exception that the words

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“§ 750.11(c)” are substituted for “§ 750.2(b)” in § 750.3(a)(1) and (2).

[43 FR 50905, Nov. 1, 1978, as amended at 59 FR 16998, Apr. 11, 1994]

§ 750.15 Public comments.

Section 750.4 shall be applicable with the exception that the time period in § 750.4(b) is shortened to 1 week.

§ 750.16 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 rule-making 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.

§ 750.17 Subpoenas.

Section 750.5 shall be applicable.

§ 750.18 Participation in informal hearing.

(a) Each person or organization desiring to participate in the informal hearing required by section 6(c)(2)(C) of TSCA shall file a written request to so participate with the record and hearing clerk which shall be received no later than 7 days prior to the scheduled start of the hearing. The hearing shall begin

7 days after the close of the 30-day comment period or as soon thereafter as practicable.

(b) With the exception of the first sentence in § 750.6(a), § 750.6 shall be applicable with the further exception that the time period in § 750.6(b) is shortened to no later than 3 days prior to the start of the hearing.

§ 750.19 Conduct of informal hearing.

Section 750.7 shall be applicable with the addition of the following sentence at the end of § 750.7(c):

Participants shall be allowed to designate testimony from prior EPA informal rule-making hearings concerning PCB's under TSCA. The hearing panel may reject repetitive testimony previously presented at such hearings.

§ 750.20 Cross-examination.

Section 750.8 shall be applicable.

§ 750.21 Final rule.

(a) As soon as feasible after the deadline for submittal of reply comments, the Agency shall issue a final rule. The Agency shall also publish at that time:

(1) A list of all material added to the record (other than public comments and material from the hearing record) which has not previously been listed in a FEDERAL REGISTER document, and

(2) The effective date of the rule.

(b) EPA will grant or deny petitions under section 6(e)(3)(B) of TSCA submitted pursuant to § 750.11. EPA will act on such petitions subsequent to opportunity for an informal hearing pursuant to this rule.

(c) In determining whether to grant an exemption to the PCB ban, the Agency shall apply the two standards enunciated in section 6(e)(3)(B) of TSCA.

[43 FR 50905, Nov. 1, 1978, as amended at 72 FR 57238, Oct. 9, 2007]

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

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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.

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(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 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 EPA considers to be relevant to such rule and that EPA 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

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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 record will be added to the record as soon as feasible after its receipt by EPA.

(c) The Record Clerk for each rulemaking will be responsible for EPA compliance with the requirements of paragraph (a) of this section.

[44 FR 31560, Mar. 31, 1979, as amended at 72 FR 57238, Oct. 9, 2007]

§ 750.35 Public comments.

(a) Main comments must be post-marked or received no later than the time specified in the Notice of Proposed Rulemaking and must contain all comments on and criticisms of that Notice by the commenting person, based on information which is or reasonably could have been available to that person at the time.

(b) Reply comments must be post-marked or received no later than one week after the close of all informal hearings on the proposed rule and must be restricted to comments on:

- (1) Other comments;
- (2) Material in the hearing record; and
- (3) Material which was not and could not reasonably have been available to the commenting party a sufficient time before main comments were due.

(c) Extensions of the time for filing comments may be granted in writing by the Hearing Chairman. Application for an extension must be made in writing. Comments submitted after the comment period and all extensions of it have expired need not be added to the rulemaking record and need not be considered in decisions concerning the rule.

(d) Unless the Notice of Proposed Rulemaking states otherwise, four copies of all comments must be submitted.

§ 750.36 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.

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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.

§ 750.37 Subpoenas.

(a) Where necessary, subpoenas requiring the production of documentary material, the attendance of persons at the hearing, or responses to written questions may be issued. Subpoenas may be issued either upon request as provided in paragraph (b) of this section or by EPA on its own motion.

(b) All subpoena requests must be in writing. Hearing participants may request the issuance of subpoenas as follows:

(1) Subpoenas for the attendance of persons or for the production of documents or responses to questions at the legislative hearing may be requested at any time up to the deadline for filing main comments.

(2) Subpoenas for production of documents or answers to questions after the legislative hearing may be requested at any time between the beginning of the legislative hearing and the deadline for submitting reply comments.

(c) EPA will rule on all subpoena requests filed under paragraph (b)(1) of

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this section no later than the beginning of the informal hearing. Such requests may be granted, denied, or deferred. EPA will rule on all subpoena requests filed under paragraph (b)(2) of this section and all deferred subpoena requests filed under paragraph (b)(1) of this section no later than the promulgation of the final rule. Such requests will be either granted or denied.

§ 750.38 Participation in informal hearing.

(a) Each person or organization desiring to participate in the informal hearing required by section 6(c)(2)(C) of TSCA must file a written request to participate with the Hearing Clerk. This request must be received no later than seven days prior to the scheduled start of the hearing. The hearing will begin seven days after the close of the thirty day comment period or as soon thereafter as practicable. The request must include:

(1) A brief statement of the interest of the person or organization in the proceeding;

(2) A brief outline of the points to be addressed;

(3) An estimate of the time required; and

(4) If the request comes from an organization, a nonbinding list of the persons to take part in the presentation. Organizations are requested to bring with them, to the extent possible, employees with individual expertise in and responsibility for each of the areas to be addressed. No organization not filing main comments in the rulemaking will be allowed to participate at the hearing, unless a waiver of this requirement is granted in writing by the Hearing Chairman or the organization is appearing at the request of EPA or under subpoena.

(b) No later than three days prior to the start of the hearing, the Hearing Clerk will make a hearing schedule publicly available and mail or deliver it to each of the persons who requested to appear at the hearing. This schedule will be subject to change during the course of the hearing at the discretion of those presiding over it.

(c) Opening statements should be brief, and restricted either to points that could not have been made in main

comments or to emphasizing points which are made in main comments, but which the participant believes can be more forcefully urged in the hearing context.

§ 750.39 Conduct of informal hearing.

(a) A panel of EPA employees shall preside at each hearing conducted under section 6(c)(2)(C) of TSCA. In appropriate cases, other Executive Branch employees may also sit with and assist the panel. The membership of the panel may change as different topics arise during the hearing. In general, the panel membership will consist of EPA employees with special responsibility for the final rule or special expertise in the topics under discussion. One member of the panel will be named to chair the proceedings and will attend throughout the hearing, unless unavoidably prevented by sickness or similar personal circumstances.

(b) The panel may question any individual or group participating in the hearing on any subject relating to the rulemaking. Cross-examination by others will normally not be permitted at this stage. It may be granted in compelling circumstances at the sole discretion of the hearing panel. However, persons in the hearing audience may submit questions in writing for the hearing panel to ask the participants, and the hearing panel may, at their discretion, ask these questions.

(c) Participants in the hearing may submit additional material for the hearing record and shall submit such additional material as the hearing panel may request. All such submissions will become part of the record of the hearing. A verbatim transcript of the hearing shall be made. Participants will be allowed to designate testimony from prior EPA informal rulemaking hearings concerning PCBs under TSCA. The hearing panel may reject repetitive testimony previously presented at such hearings.

§ 750.40 Cross-examination.

(a) After the close of the informal hearing conducted under § 750.39, any participant in that hearing may submit a written request for cross-examination. The request must be received by

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EPA within one week after a full transcript of the informal hearing becomes available and must specify:

(1) The disputed issue(s) of material fact as to which cross-examination is requested. This must include an explanation of why the questions at issue are “factual”, rather than of an analytical or policy nature, the extent to which they are in “dispute” in the light of the record made thus far, and the extent to which and why they can reasonably be considered “material” to the decision on the final rule; and

(2) The person(s) the participant desires to cross-examine, and an estimate of the time necessary. This must include a statement as to how the cross-examination requested can be expected to result in “full and true disclosure” resolving the issue of material fact involved.

(b) Within one week after receipt of all requests for cross-examination under paragraph (a), the hearing panel will rule on them. The ruling will be served by the Hearing Clerk on all participants who have requested cross-examination and will be inserted in the record. Written notice of the ruling will be given to all persons requesting cross-examination and all persons to be cross-examined. The ruling will specify:

(1) The issues as to which cross-examination is granted;

(2) The persons to be cross-examined on each issue;

(3) The persons to be allowed to conduct cross-examination; and

(4) Time limits for the examination of each witness by each cross-examiner.

(c) In issuing this ruling, the panel may determine that one or more participants who have requested cross-examination have the same or similar interests and should be required to choose a single representative for purposes of cross-examination by that single representative without identifying the representative further. Subpoenas for witnesses may be issued where necessary.

(d) Within one week after the insertion into the record of the ruling under paragraph (b) of this section, the hearing at which the cross-examination will be conducted will begin. One or

more members of the original panel will preside for EPA. The panel will have authority to conduct cross-examination on behalf of any participant, although as a general rule this right will not be exercised. The panel will also have authority to modify the governing ruling in any respect and to make new rulings on group representation under section 6(c)(3)(C) of TSCA. A verbatim transcript of the hearing will be made.

(e)(1) No later than the time set for requesting cross-examination, a hearing participant may request that other alternative methods of clarifying the record (such as informal conferences or the submittal of additional information) be used. Such requests may be submitted either in lieu of cross-examination requests, or in conjunction with them.

(2) The panel in passing on a cross-examination request may, as a precondition to ruling on its merits, require that alternative means of clarifying the record be used whether or not that has been requested under paragraph (e)(1) of this section. In such a case, the results of the use of such alternative means will be made available to the person requesting cross-examination for a one-week comment period, and the panel will make a final ruling on cross-examination within one week thereafter.

(f) Waivers or extensions of any deadline in this section applicable to persons other than EPA may be granted on the record of the hearing by the person chairing it or in writing by the Hearing Chairman.

§ 750.41 Final rule.

(a) As soon as feasible after the deadline for submittal of reply comments, EPA will issue a final rule. EPA will also publish at that time:

(1) A list of all material added to the record (other than public comments and material from the hearing record) which has not previously been listed in a FEDERAL REGISTER document, and

(2) The effective date of the rule.

(b) EPA will grant or deny petitions under section 6(e)(3)(B) of TSCA submitted pursuant to § 750.31. EPA will

act on such petitions subsequent to opportunity for an informal hearing pursuant to this rule.

(c) In determining whether to grant an exemption to the PCB ban, EPA will apply the two standards enunciated in section 6(e)(3)(B) of TSCA.

[44 FR 31560, Mar. 31, 1979, as amended at 72 FR 57238, Oct. 9, 2007]

PART 761—POLYCHLORINATED BIPHENYLS (PCBs) MANUFACTURING, PROCESSING, DISTRIBUTION IN COMMERCE, AND USE PROHIBITIONS

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