

Environmental Protection Agency

§ 790.87

intent to test or an exemption application.

(3) When both manufacturers and processors are subject to the rule, exemption applications must be filed by the date processing begins by any person not processing as of the effective date of the test rule described in § 790.40 or by 30 days after publication of the FEDERAL REGISTER notice described in § 790.48(b)(2) who, before the end of the reimbursement period, processes the test substance and who is subject to the requirement to submit either a letter of intent to test or an exemption application.

(c) *Scope of application.* A person may apply for an exemption from all, or one or more, specific testing requirements in a test rule in part 799 of this chapter.

[50 FR 20660, May 17, 1985, as amended at 58 FR 34205, June 23, 1993]

§ 790.82 Content of exemption application.

The exemption application must contain:

(a) The identity of the test rule, the chemical identity, and the CAS No. of the test substance on which the application is based.

(b) The specific testing requirement(s) from which an exemption is sought and the basis for the exemption request.

(c) Name, address, and telephone number of applicant.

(d) Name, address, and telephone number of appropriate individual to contact for further information.

(e)(1) If required in the test rule to establish equivalence:

(i) The chemical identity of the test substance on which the application is based.

(ii) Equivalence data specified in § 790.85.

(2) If a test rule requires testing of a single representative substance, EPA will consider all forms of the chemical subject to that rule to be equivalent and will not require the submission of equivalence data as described in § 790.85.

[50 FR 20660, May 17, 1985, as amended at 54 FR 36315, Sept. 1, 1989]

§ 790.85 Submission of equivalence data.

If EPA requires in a test rule promulgated under section 4 of the Act the testing of two or more test substances which are forms of the same chemical, each exemption applicant must submit the following data:

(a) The chemical identity of each technical-grade chemical substance or mixture manufactured and/or processed by the applicant for which the exemption is sought. The exact type of identifying data required will be specified in the test rule, but may include all characteristics and properties of the applicant's substance or mixture, such as boiling point, melting point, chemical analysis (including identification and amount of impurities), additives, spectral data, and other physical or chemical information that may be relevant in determining whether the applicant's substance or mixture is equivalent to the specific test substance.

(b) The basis for the applicant's belief that the substance or mixture is equivalent to the test substance or mixture.

(c) Any other data which exemption applicants are directed to submit in the test rule which may bear on a determination of equivalence. This may include a description of the process by which each technical-grade chemical substance or mixture for which an exemption is sought is manufactured or processed prior to use or distribution in commerce by the applicant.

§ 790.87 Approval of exemption applications.

(a) EPA will conditionally approve exemption applications if:

(1)(i) For single-phase test rules, EPA has received a letter of intent to conduct the testing from which exemption is sought;

(ii) For two-phase test rules, EPA has received a complete proposed study plan for the testing from which exemption is sought and has adopted the study plan, as proposed or modified, as test standards and schedules in a final Phase II test rule; and

(2) The chemical substance or mixture with respect to which the application was submitted is equivalent to a test substance or mixture for which the

§ 790.88

40 CFR Ch. I (7-1-07 Edition)

required data have been or are being submitted in accordance with a test rule; and

(3) Submission of the required test data concerning that chemical substance or mixture would be duplicative of data which have been or are being submitted to EPA in accordance with a test rule.

(b)(1) If a single representative substance is to be tested under a test rule, EPA will consider all forms of the chemical subject to that rule to be equivalent and will contact the exemption applicant only if information is missing or unclear.

(2) If two or more representative substances are to be tested under a test rule, EPA will evaluate equivalence claims made in each exemption application according to the criteria discussed in the test rule.

(i) If EPA finds an equivalence claim to be in error or inadequately supported, the applicant will be notified by certified mail. The applicant will be given 15 days to provide clarifying information.

(ii) Exemption applicants will be notified that equivalence has been accepted or rejected.

(c) The final Phase II test rule which adopts the study plans in two-phase rulemaking, a separate FEDERAL REGISTER notice in single-phase rulemaking, or a letter by certified mail will give exemption applicants final notice that they have received a conditional exemption. All conditional exemptions thus granted are contingent upon the test sponsors' successful completion of testing according to the specifications in the test rule.

§ 790.88 Denial of exemption application.

(a) EPA may deny any exemption application if:

(1) EPA determines that the applicant has failed to demonstrate that the applicant's chemical is equivalent to the test substance; or

(2) The exemption applicant fails to submit any of the information specified in § 790.82; or

(3) The exemption applicant fails to submit any of the information specified in § 790.85 if required in the test rule; or

(4)(i) For single-phase test rules, EPA has not received a letter of intent to conduct the test for which exemption is sought; or

(ii) For two-phase test rules, EPA has not received an adequate study plan for the test for which exemption is sought; or

(5) The study sponsor(s) fails to initiate the required testing by the deadlines adopted in the test rule; or

(6) The study sponsor(s) fails to submit data as required in the test standard and deadlines for submission of test data as adopted in the test rule or as modified in accordance with § 790.55.

(b) EPA will notify the exemption applicant by certified mail or FEDERAL REGISTER notice of EPA's determination that the exemption application is denied.

§ 790.90 Appeal of denial of exemption application.

(a) Within 30 days after receipt of notification that EPA has denied an application for exemption, the applicant may file an appeal with EPA.

(b) The appeal shall indicate the basis for the applicant's request for reconsideration.

(c)(1) The applicant may also include a request for a hearing. Hearings will be held according to the procedures described in § 790.97.

(2) Hearing requests must be in writing and must be received by EPA within 30 days of receipt of the letter or publication of the FEDERAL REGISTER notice described in § 790.88(b). Hearing requests must provide reasons why a hearing is necessary.

(d) If EPA determines that there are material issues of fact, then the request for a hearing will be granted. If EPA denies a hearing request, EPA will base its decision on the written submission.

(e) EPA will notify the applicant of its decision within 60 days after EPA receives the appeal described in paragraph (a) of this section or within 60 days after completion of a hearing described in paragraph (c) of this section.

(f) The filing of an appeal from the denial of an exemption shall not act to stay the applicant's legal obligations under a test rule promulgated under section 4 of the Act.