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Protection of
Environment

40

PARTS 53 TO 59

Revised as of July 1, 1996

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(c) 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).

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

(e) EPA may seek to enjoin an asbestos abatement project in violation of this part, or take other actions under the authority of section 7 or 17 of the Act (15 U.S.C. 2606 or 2616).

§ 763.126 Inspections.

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

Subpart H—[Reserved]

Subpart I—Prohibition of the Manufacture, Importation, Processing, and Distribution in Commerce of Certain Asbestos-Containing Products; Labeling Requirements

SOURCE: 54 FR 29507, July 12, 1989, unless otherwise noted.

§ 763.160 Scope.

This subpart prohibits the manufacture, importation, processing, and distribution in commerce of the asbestos-containing products identified and at the dates indicated in §§ 763.165, 763.167, and 763.169. This subpart requires that products subject to this rule's bans, but not yet subject to a ban on distribution in commerce, be labeled. This subpart also includes general exemptions and procedures for requesting exemptions from the provisions of this subpart.

§ 763.163 Definitions.

For purposes of this subpart:

Act means the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*

Agency means the United States Environmental Protection Agency.

Asbestos means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); tremolite; anthophyllite; and actinolite.

Asbestos-containing product means any product to which asbestos is deliberately added in any concentration or which contains more than 1.0 percent asbestos by weight or area.

Chemical substance, has the same meaning as in section 3 of the Act.

Commerce has the same meaning as in section 3 of the Act.

Commercial paper means an asbestos-containing product which is made of paper intended for use as general insulation paper or muffler paper. Major applications of commercial papers are insulation against fire, heat transfer, and corrosion in circumstances that require a thin, but durable, barrier.

Corrugated paper means an asbestos-containing product made of corrugated paper, which is often cemented to a flat backing, may be laminated with foils or other materials, and has a corrugated surface. Major applications of asbestos corrugated paper include: thermal insulation for pipe coverings; block insulation; panel insulation in elevators; insulation in appliances; and insulation in low-pressure steam, hot water, and process lines.

Customs territory of the United States means the 50 States, Puerto Rico, and the District of Columbia.

Distribute in commerce has the same meaning as in section 3 of the Act, but the term does not include actions taken with respect to an asbestos-containing product (to sell, resale, deliver, or hold) in connection with the end use of the product by persons who are users (persons who use the product for its intended purpose after it is manufactured or processed). The term also does not include distribution by manufacturers, importers, and processors, and other persons solely for purposes of disposal of an asbestos-containing product.

Flooring felt means an asbestos-containing product which is made of paper felt intended for use as an underlayer for floor coverings, or to be bonded to the underside of vinyl sheet flooring.

Import means to bring into the customs territory of the United States, except for: (1) Shipment through the customs territory of the United States for export without any use, processing, or disposal within the customs territory of the United States; or (2) entering the customs territory of the United States

as a component of a product during normal personal or business activities involving use of the product.

Importer means anyone who imports a chemical substance, including a chemical substance as part of a mixture or article, into the customs territory of the United States. *Importer* includes the person primarily liable for the payment of any duties on the merchandise or an authorized agent acting on his or her behalf. The term includes as appropriate:

- (1) The consignee.
- (2) The importer of record.
- (3) The actual owner if an actual owner's declaration and superseding bond has been filed in accordance with 19 CFR 141.20.

- (4) The transferee, if the right to withdraw merchandise in a bonded warehouse has been transferred in accordance with subpart C of 19 CFR Part 144.

Manufacture means to produce or manufacture in the United States.

Manufacturer means a person who produces or manufactures in the United States.

New uses of asbestos means commercial uses of asbestos not identified in § 763.165 the manufacture, importation or processing of which would be initiated for the first time after August 25, 1989.

Person means any natural person, firm, company, corporation, joint-venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof, or any municipality; any interstate body and any department, agency, or instrumentality of the Federal Government.

Process has the same meaning as in section 3 of the Act.

Processor has the same meaning as in section 3 of the Act.

Rollboard means an asbestos-containing product made of paper that is produced in a continuous sheet, is flexible, and is rolled to achieve a desired thickness. Asbestos rollboard consists of two sheets of asbestos paper laminated together. Major applications of this product include: office partitioning; garage paneling; linings for stoves and electric switch boxes; and fire-proofing agent for security boxes, safes, and files.

Specialty paper means an asbestos-containing product that is made of paper intended for use as filters for beverages or other fluids or as paper fill for cooling towers. Cooling tower fill consists of asbestos paper that is used as a cooling agent for liquids from industrial processes and air conditioning systems.

State has the same meaning as in section 3 of the Act.

Stock-on-hand means the products which are in the possession, direction, or control of a person and are intended for distribution in commerce.

United States has the same meaning as in section 3 of the Act.

[59 FR 33208, June 28, 1994]

§ 763.165 Manufacture and importation prohibitions.

(a) After August 27, 1990, no person shall manufacture or import the following asbestos-containing products, either for use in the United States or for export: flooring felt and new uses of asbestos.

(b) After August 26, 1996, no person shall manufacture or import the following asbestos-containing products, either for use in the United States or for export: commercial paper, corrugated paper, rollboard, and specialty paper.

(c) The import prohibitions of this subpart do not prohibit:

- (1) The import into the customs territory of the United States of products imported solely for shipment outside the customs territory of the United States, unless further repackaging or processing of the product is performed in the United States; or
- (2) Activities involving purchases or acquisitions of small quantities of products made outside the customs territory of the United States for personal use in the United States.

[59 FR 33209, June 28, 1994]

§ 763.167 Processing prohibitions.

(a) After August 27, 1990, no person shall process for any use, either in the United States or for export, any of the asbestos-containing products listed at § 763.165(a).

(b) After August 26, 1996, no person shall process for any use, either in the

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United States or for export, any of the asbestos-containing products listed at § 763.165(b).

[59 FR 33209, June 28, 1994]

§ 763.169 Distribution in commerce prohibitions.

(a) After August 25, 1992, no person shall distribute in commerce, either for use in the United States or for export, any of the asbestos-containing products listed at § 763.165(a).

(b) After August 25, 1997, no person shall distribute in commerce, either for use in the United States or for export, any of the asbestos-containing products listed at § 763.165(b).

(c) A manufacturer, importer, processor, or any other person who is subject to a ban on distribution in commerce in paragraph (a) or (b) of this section must, within 6 months of the effective date of the ban of a specific asbestos-containing product from distribution in commerce, dispose of all their remaining stock-on-hand of that product, by means that are in compliance with applicable local, State, and Federal restrictions which are current at that time.

[59 FR 33209, June 28, 1994]

§ 763.171 Labeling requirements.

(a) After August 27, 1990, manufacturers, importers, and processors of all asbestos-containing products that are identified in § 763.165(a) shall label the products as specified in this subpart at the time of manufacture, import, or processing. This requirement includes labeling all manufacturers', importers', and processors' stock-on-hand as of August 27, 1990.

(b) After August 25, 1995, manufacturers, importers, and processors of all asbestos-containing products that are identified in § 763.165(b), shall label the products as specified in this subpart at the time of manufacture, import, or processing. This requirement includes labeling all manufacturers', importers', and processors' stock-on-hand as of August 25, 1995.

(c) The label shall be placed directly on the visible exterior of the wrappings and packaging in which the product is placed for sale, shipment, or storage. If the product has more than one layer of

external wrapping or packaging, the label must be attached to the innermost layer adjacent to the product. If the innermost layer of product wrapping or packaging does not have a visible exterior surface larger than 5 square inches, either a tag meeting the requirements of paragraph (d) of this section must be securely attached to the product's innermost layer of product wrapping or packaging, or a label must be attached to the next outer layer of product packaging or wrapping. Any products that are distributed in commerce to someone other than the end user, shipped, or stored without packaging or wrapping must be labeled or tagged directly on a visible exterior surface of the product as described in paragraph (d) of this section.

(d)(1) Labels must be either printed directly on product packaging or in the form of a sticker or tag made of plastic, paper, metal, or other durable substances. Labels must be attached in such a manner that they cannot be removed without defacing or destroying them. Product labels shall appear as in paragraph (d)(2) of this section and consist of block letters and numerals of color that contrasts with the background of the label or tag. Labels shall be sufficiently durable to equal or exceed the life, including storage and disposal, of the product packaging or wrapping. The size of the label or tag must be at least 15.25 cm (6 inches) on each side. If the product packaging is too small to accommodate a label of this size, the label may be reduced in size proportionately to the size of the product packaging or wrapping down to a minimum 2.5 cm (1 inch) on each side if the product wrapping or packaging has a visible exterior surface larger than 5 square inches.

(2) Products subject to this subpart shall be labeled in English as follows:

NOTICE

This product contains *ASBESTOS*. The U.S. Environmental Protection Agency has banned the distribution in U.S. commerce of this product under section 6 of the Toxic Substances Control Act (15 U.S.C. 2605) as of (insert effective date of ban on distribution in commerce). Distribution of this product in commerce after this date and intentionally removing or tampering with this label are violations of Federal law.

(e) No one may intentionally remove, deface, cover, or otherwise obscure or tamper with a label or sticker that has been applied in compliance with this section, except when the product is used or disposed of.

[59 FR 33209, June 28, 1994]

§ 763.173 Exemptions.

(a) Persons who are subject to the prohibitions imposed by §§ 763.165, 763.167, or 763.169 may file an application for an exemption. Persons whose exemption applications are approved by the Agency may manufacture, import, process, or distribute in commerce the banned product as specified in the Agency's approval of the application. No applicant for an exemption may continue the banned activity that is the subject of an exemption application after the effective date of the ban unless the Agency has granted the exemption or the applicant receives an extension under paragraph (b)(4) or (5) of this section.

(b) Application filing dates. (1) Applications for products affected by the prohibitions under §§ 763.165(a) and 763.167(a) may be submitted at any time and will be either granted or denied by EPA as soon as is feasible.

(2) Applications for products affected by the ban under § 763.169(a) may be submitted at any time and will be either granted or denied by EPA as soon as is feasible.

(3) Applications for products affected by the ban under §§ 763.165(b) and 763.167(b) may not be submitted prior to February 27, 1995. Complete applications received after that date, but before August 25, 1995, will be either granted or denied by the Agency prior to the effective date of the ban for the product. Applications received after August 25, 1995, will be either granted or denied by EPA as soon as is feasible.

(4) Applications for products affected by the ban under § 763.169(b) may not be submitted prior to February 26, 1996. Complete applications received after that date, but before August 26, 1996, will be either granted or denied by the Agency prior to the effective date of the ban for the product. Applications received after August 26, 1996, will be either granted or denied by EPA as soon as is feasible.

(5) The Agency will consider an application for an exemption from a ban under § 763.169 for a product at the same time the applicant submits an application for an exemption from a ban under § 763.165 or § 763.167 for that product. EPA will grant an exemption at that time from a ban under § 763.169 if the Agency determines it appropriate to do so.

(6) If the Agency denies an application less than 30 days before the effective date of a ban for a product, the applicant can continue the activity for 30 days after receipt of the denial from the Agency.

(7) If the Agency fails to meet the deadlines stated in paragraphs (b)(3) and (b)(4) of this section for granting or denying a complete application in instances in which the deadline is before the effective date of the ban to which the application applies, the applicant will be granted an extension of 1 year from the Agency's deadline date. During this extension period the applicant may continue the activity that is the subject of the exemption application. The Agency will either grant or deny the application during the extension period. The extension period will terminate either on the date the Agency grants the application or 30 days after the applicant receives the Agency's denial of the application. However, no extension will be granted if the Agency is scheduled to grant or deny an application at some date after the effective date of the ban, pursuant to the deadlines stated in paragraphs (b)(3) and (b)(4) of this section.

(c) Where to file. All applications must be submitted to the following location: TSCA Docket Receipts Office (7407), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, Rm E-C99, 401 M St., SW., Washington, DC 20460, ATTENTION: Asbestos Exemption. For information regarding the submission of exemptions containing information claimed as confidential business information (CBI), see § 763.179.

(d) Content of application and criteria for decisionmaking.

(1) Content of application. Each application must contain the following:

(i) Name, address, and telephone number of the applicant.

(ii) Description of the manufacturing, import, processing, and/or distribution in commerce activity for which an exemption is requested, including a description of the asbestos-containing product to be manufactured, imported, processed, or distributed in commerce.

(iii) Identification of locations at which the exempted activity would take place.

(iv) Length of time requested for exemption (maximum length of an exemption is 4 years).

(v) Estimated amount of asbestos to be used in the activity that is the subject of the exemption application.

(vi) Data demonstrating the exposure level over the life cycle of the product that is the subject of the application.

(vii) Data concerning:

(A) The extent to which non-asbestos substitutes for the product that is the subject of the application fall significantly short in performance under necessary product standards or requirements, including laws or ordinances mandating product safety standards.

(B) The costs of non-asbestos substitutes relative to the costs of the asbestos-containing product and, in the case in which the product is a component of another product, the effect on the cost of the end use product of using the substitute component.

(C) The extent to which the product or use serves a high-valued use.

(viii) Evidence of demonstrable good faith attempts by the applicant to develop and use a non-asbestos substance or product which may be substituted for the asbestos-containing product or the asbestos in the product or use that is the subject of the application.

(ix) Evidence, in addition to that provided in the other information required with the application, showing that the continued manufacture, importation, processing, distribution in commerce, and use, as applicable, of the product will not present an unreasonable risk of injury to human health.

(2) Criteria for decision (existing products). After considering all the information provided by an applicant under paragraphs (d)(1) and (e) of this section, and any other information available to EPA, EPA will grant an exemption from the prohibitions in §§ 763.165, 763.167, or 763.169 for an appli-

cant's asbestos-containing product only if EPA determines both of the following:

(i) The applicant has made good faith attempts to develop and use a non-asbestos substance or product which may be substituted for the asbestos-containing product or the asbestos in the product or use, and those attempts have failed to produce a substitute or a substitute that results in a product that can be economically produced.

(ii) Continued manufacturing, processing, distribution in commerce, and use, as applicable, of the product will not present an unreasonable risk of injury to human health.

(3) Criteria for decision (new products). Requests to develop and use an asbestos substance or product will be treated as a petition pursuant to Section 21 of TSCA.

(e) The Agency reserves the right to request further information from an exemption applicant if necessary to complete the Agency's evaluation of an application.

(f) Upon receipt of a complete application, the Agency will issue a notice in the FEDERAL REGISTER announcing its receipt and invite public comments on the merits of the application.

(g) If the application does not include all of the information required in paragraph (d) of this section, the Agency will return it to the applicant as incomplete and any resubmission of the application will be considered a new application for purposes of the availability of any extension period. If the application is substantially inadequate to allow the Agency to make a reasoned judgment on any of the information required in paragraph (d) of this section and the Agency chooses to request additional information from the applicant, the Agency may also determine that an extension period provided for in paragraph (b)(5) of this section is unavailable to the applicant.

(h) When denying an application, the Agency will notify the applicant by registered mail of its decision and rationale. Whenever possible, the Agency will send this letter prior to the appropriate ban. This letter will be considered a final Agency action for purposes of judicial review. A notice announcing the Agency's denial of the application

will be published in the FEDERAL REGISTER.

(i) If the Agency proposes to approve an exemption, it will issue a notice in the FEDERAL REGISTER announcing this intent and invite public comments. If, after considering any timely comments received, the Agency approves an exemption, its decision will be published in the FEDERAL REGISTER. This notice will be considered a final Agency action for purposes of judicial review.

(j) The length of an exemption period will be specified by the agency when it approves the exemption. To extend an exemption period beyond the period stipulated by EPA, applicants must submit a new application to the Agency, following the application procedures described in this section. Applications may not be submitted prior to 15 months before the expiration of the exemption period, unless stated otherwise in the notice granting the exemption. Applications received between 15 months and 1 year before the end of the exemption period will be either granted or denied by the Agency before the end of the exemption period. Applications received after the date 1 year prior to the end of the exemption period will be either granted or denied by the Agency as soon as is feasible. Applicants may not continue the activity that is the subject of the renewal application after the date of the end of the exemption period.

[54 FR 29507, July 12, 1989; 54 FR 37531, Sept. 11, 1989, as amended at 54 FR 46898, Nov. 8, 1989; 59 FR 33210, June 28, 1994]

§ 763.175 Enforcement.

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

(b) Failure or refusal to establish and maintain records, or to permit access to or copying of records 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).

(c) 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).

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

(e) The Agency may seek to enjoin the manufacture, import, processing, or distribution in commerce of asbestos-containing products in violation of this subpart, or act to seize any asbestos-containing products manufactured, imported, processed, or distributed in commerce in violation of this subpart, or take any other actions under the authority of section 7 or 17 of the act (15 U.S.C. 2606 or 2616) that are appropriate.

§ 763.176 Inspections.

The Agency will conduct inspections under section 11 of the Act (15 U.S.C. 2610) to ensure compliance with this subpart.

§ 763.178 Recordkeeping.

(a) *Inventory.* (1) Each person who is subject to the prohibitions imposed by §§ 763.165 and 763.167 must perform an inventory of the stock-on-hand of each banned product as of the effective date of the ban for that product for the applicable activity.

(2) The inventory shall be in writing and shall include the type of product, the number of product units currently in the stock-on-hand of the person performing the inventory, and the location of the stock.

(3) Results of the inventory for a banned product must be maintained by the person for 3 years after the effective date of the § 763.165 or § 763.167 ban on the product.

(b) *Records.* (1) Each person whose activities are subject to the bans imposed by §§ 763.165, 763.167, and 763.169 for a product must, between the effective date of the § 763.165 or § 763.167 ban on the product and the § 763.169 ban on the product, keep records of all commercial transactions regarding the product, including the dates of purchases and sales and the quantities purchased or sold. These records must be maintained for 3 years after the effective date of the § 763.169 ban for the product.

(2) Each person who is subject to the requirements of § 763.171 must, for each product required to be labeled, maintain a copy of the label used in compliance with § 763.171. These records must be maintained for 3 years after the effective date of the ban on distribution

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in commerce for the product for which the § 763.171 requirements apply.

[54 FR 29507, July 12, 1989, as amended by 54 FR 46898, Nov. 8, 1989; 58 FR 34205, June 23, 1993]

§ 763.179 Confidential business information claims.

(a) Applicants for exemptions under § 763.173 may assert a Confidential Business Information (CBI) claim for information in an exemption application or supplement submitted to the Agency under this subpart only if the claim is asserted in accordance with this section, and release of the information would reveal trade secrets or confidential commercial or financial information, as provided in section 14(a) of the Act. Information covered by a CBI claim will be treated in accordance with the procedures set forth in 40 CFR Part 2, subpart B. The Agency will place all information not claimed as CBI in the manner described in this section in a public file without further notice to the applicant.

(b) Applicants may assert CBI claims only at the time they submit a completed exemption application and only in the specified manner. If no such claim accompanies the information when it is received by the Agency, the information may be made available to the public without further notice to the applicant. Submitters that claim information as business confidential must do so by writing the word "Confidential" at the top of the page on which the information appears and by underlining, circling, or placing brackets ([]) around the information claimed CBI.

(c) Applicants who assert a CBI claim for submitted information must provide the Agency with two copies of their exemption application. The first copy must be complete and contain all information being claimed as CBI. The second copy must contain only information not claimed as CBI. The Agency will place the second copy of the submission in a public file. Failure to furnish a second copy of the submission when information is claimed as CBI in the first copy will be considered a presumptive waiver of the claim of confidentiality. The Agency will notify the applicant by certified mail that a find-

ing of a presumptive waiver of the claim of confidentiality has been made. The applicant has 30 days from the date of receipt of notification to submit the required second copy. Failure to submit the second copy will cause the Agency to place the first copy in a public file.

(d) Applicants must substantiate all claims of CBI at the time the applicant asserts the claim, i.e., when the exemption application or supplement is submitted, by responding to the questions in paragraph (e) of this section. Failure to provide substantiation of a claim at the time the applicant submits the application will result in a waiver of the CBI claim, and the information may be disclosed to the public without further notice to the applicant.

(e) Applicants who assert any CBI claims must substantiate all claims by providing detailed responses to the following:

(1) Is this information subject to a patent or patent application in the United States or elsewhere? If so, why is confidentiality necessary?

(2) For what period do you assert a claim of confidentiality? If the claim is to extend until a certain event or point in time, please indicate that event or time period. Explain why such information should remain confidential until such point.

(3) Has the information that you are claiming as confidential been disclosed to persons outside of your company? Will it be disclosed to such persons in the future? If so, what restrictions, if any, apply to use or further disclosure of the information?

(4) Briefly describe measures taken by your company to guard against undesired disclosure of the information you are claiming as confidential to others.

(5) Does the information claimed as confidential appear or is it referred to in advertising or promotional materials for the product or the resulting end product, safety data sheets or other similar materials for the product or the resulting end product, professional or trade publications, or any other media available to the public or to your competitors? If you answered yes, indicate where the information appears.

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(6) If the Agency disclosed the information you are claiming as confidential to the public, how difficult would it be for the competitor to enter the market for your product? Consider in your answer such constraints as capital and marketing cost, specialized technical expertise, or unusual processes.

(7) Has the Agency, another Federal agency, or a Federal court made any confidentiality determination regarding this information? If so, provide copies of such determinations.

(8) How would your company's competitive position be harmed if the Agency disclosed this information? Why should such harm be considered substantial? Describe the causal relationship between the disclosure and harm.

(9) In light of section 14(b) of TSCA, if you have claimed information from a health and safety study as confidential, do you assert that disclosure of this information would disclose a process used in the manufacturing or processing of a product or information unrelated to the effects of asbestos on human health and the environment? If your answer is yes, explain.

PART 766—DIBENZO-PARA-DIOXINS/DIBENZOFURANS

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766.38 Reporting on precursor chemical substances.

AUTHORITY: 15 U.S.C. 2603 and 2607.

SOURCE: 52 FR 21437, June 5, 1987, unless otherwise noted.

Subpart A—General Provisions

§ 766.1 Scope and purpose.

(a) This part identifies requirements for testing under section 4 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2603, to ascertain whether certain specified chemical substances may be contaminated with halogenated dibenzodioxins (HDDs)/dibenzofurans (HDFs) as defined in § 766.3, and requirements for reporting under section 8 of TSCA, 15 U.S.C. 2607.

(b) Section 766.35(b) requires manufacturers and processors of chemical substances identified in § 766.25 to submit to EPA:

(1) Any existing test data showing analysis of the chemical substances for concentrations of HDDs/HDFs, applicable protocols, and the results of the analysis for HDDs/HDFs, (2) allegations of significant adverse reactions to HDDs/HDFs, compiled in accordance with Part 717 of this chapter, and (3) health and safety studies on the HDDs/HDFs, in accordance with applicable provisions of Part 716 of this chapter.

(c) Section 766.35(a) requires manufacturers and, under certain circumstances, processors of chemical substances identified in § 766.25 to submit letters of intent to test and protocols for the analysis of the chemical substances for the presence of HDDs/HDFs. Section 766.20 requires these manufacturers and processors to test their chemical substances for the presence of HDDs/HDFs. Any submissions must be in accordance with the EPA Procedures Governing Testing Consent Agreements and Test Rules contained in Part 790 of this chapter and any modifications to such procedures contained in this part.

(d) Section 766.32 specifies conditions under which persons required to test may request an exclusion or waiver from testing.

(e) Deadlines for submission to EPA of protocols, reports, studies, and test results are specified in Part 790, subpart C and § 766.35.