

## Environmental Protection Agency

## § 723.50

(i) *Protection in the workplace.* Requirements as specified in § 721.63 (a)(1), (a)(2)(i), (a)(2)(iii), (a)(3), (b) (concentration set at 1.0 percent), and (c).

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (j), (v)(1), (w)(1), and (x)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (e), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

[75 FR 57186, Sept. 20, 2010]

### PART 723—PREMANUFACTURE NOTIFICATION EXEMPTIONS

#### Subpart A [Reserved]

#### Subpart B—Specific Exemptions

Sec.

723.50 Chemical substances manufactured in quantities of 10,000 kilograms or less per year, and chemical substances with low environmental releases and human exposures.

723.175 Chemical substances used in or for the manufacture or processing of instant photographic and peel-apart film articles.

723.250 Polymers.

AUTHORITY: 15 U.S.C. 2604.

#### Subpart A [Reserved]

#### Subpart B—Specific Exemptions

**§ 723.50 Chemical substances manufactured in quantities of 10,000 kilograms or less per year, and chemical substances with low environmental releases and human exposures.**

(a) *Purpose and scope.* (1) This section grants an exemption from the premanufacture notice requirements of section 5(a)(1)(A) of the Toxic Sub-

stances Control Act (15 U.S.C. 2604(a)(1)(A)) for the manufacture of:

(i) Chemical substances manufactured in quantities of 10,000 kilograms or less per year.

(ii) Chemical substances with low environmental releases and human exposures.

(2) To manufacture a new chemical substance under the terms of this exemption a manufacturer must:

(i) Submit a notice of intent to manufacture 30 days before manufacture begins, as required under paragraph (e) of this section.

(ii) Comply with all other provisions of this section.

(3) This section does not apply to microorganisms subject to part 725 of this chapter.

(b) *Definitions.* The following definitions apply to this subpart.

(1) *Act* means the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

(2) *Consumer* means a private individual who uses a chemical substance or any product containing the chemical substance in or around a permanent or temporary household or residence, during recreation, or for any personal use or enjoyment.

(3) *Environment* has the same meaning as in section 3 of the Act (15 U.S.C. 2602).

(4) *Environmental transformation product* means any chemical substance resulting from the action of environmental processes on a parent compound that changes the molecular identity of the parent compound.

(5) *Metabolite* means a chemical entity produced by one or more enzymatic or nonenzymatic reactions as a result of exposure of an organism to a chemical substance.

(6) *Serious acute effects* means human disease processes or other adverse effects that have short latency periods for development, result from short-term exposure, or are a combination of these factors and that are likely to result in death, severe or prolonged incapacitation, disfigurement, or severe or prolonged loss of the ability to use a normal bodily or intellectual function with a consequent impairment of normal activities.

(7) *Serious chronic effects* means human disease processes or other adverse effects that have long latency periods for development, result from long-term exposure, are long-term illnesses, or are a combination of these factors and that are likely to result in death, severe or prolonged incapacitation, disfigurement, or severe or prolonged loss of the ability to use a normal bodily or intellectual function with a consequent impairment of normal activities.

(8) *Significant environmental effects* means:

(i) Any irreversible damage to biological, commercial, or agricultural resources of importance to society;

(ii) Any reversible damage to biological, commercial, or agricultural resources of importance to society if the damage persists beyond a single generation of the damaged resource or beyond a single year; or

(iii) Any known or reasonably anticipated loss of members of an endangered or threatened species. Endangered or threatened species are those species identified as such by the Secretary of the Interior in accordance with the Endangered Species Act, as amended (16 U.S.C. 1531).

(9) *Site* means a contiguous property unit. Property divided only by a public right-of-way is one site. There may be more than one manufacturing plant on a single site.

(10) The terms *byproduct*, *EPA*, *importer*, *impurity*, *known to or reasonably ascertainable*, *manufacture*, *manufacturer*, *new chemical substance*, *person*, *possession or control*, and *test data* have the same meanings as in § 720.3 of this chapter.

(c) *Exemption categories*. Except as provided in paragraph (d) of this section, this exemption applies to:

(1) Any manufacturer of a new chemical substance manufactured in quantities of 10,000 kilograms or less per year under the terms of this exemption.

(2) Any manufacturer of a new chemical substance satisfying all of the following low environmental release and low human exposure eligibility criteria:

(i) *Consumers and the general population*. For exposure of consumers and

the general population to the new chemical substance during all manufacturing, processing, distribution in commerce, use, and disposal of the substance:

(A) No dermal exposure.

(B) No inhalation exposure (except as described in paragraph (c)(2)(iv) of this section).

(C) Exposure in drinking water no greater than a 1 milligram per year (estimated average dosage resulting from drinking water exposure in streams from the maximum allowable concentration level from ambient surface water releases established under paragraph (c)(2)(iii) of this section or a higher concentration authorized by EPA under paragraph (c)(2)(iii) of this section).

(ii) *Workers*. For exposure of workers to the new chemical substance during all manufacturing, processing, distribution in commerce, use and disposal of the substance:

(A) No dermal exposure (this criterion is met if adequate dermal exposure controls are used in accordance with applicable EPA guidance).

(B) No inhalation exposure (this criterion is considered to be met if adequate inhalation exposure controls are used in accordance with applicable EPA guidance).

(iii) *Ambient surface water*. For ambient surface water releases, no releases resulting in surface water concentrations above 1 part per billion, calculated using the methods prescribed in §§ 721.90 and 721.91, unless EPA has approved a higher surface water concentration supported by relevant and scientifically valid data submitted to EPA in a notice under paragraph (e) of this section on the substance or a close structural analogue of the substance which demonstrates that the new substance will not present an unreasonable risk of injury to aquatic species or human health at the higher concentration.

(iv) *Incineration*. For ambient air releases from incineration, no releases of the new chemical substance above 1 microgram per cubic meter maximum annual average concentration, calculated using the formula:

(kg/day of release after treatment) multiplied by (number of release days per year)

## Environmental Protection Agency

## § 723.50

multiplied by  $(9.68 \times 10^{-6})$  micrograms per cubic meter.

(v) *Land or groundwater.* For releases to land or groundwater, no releases to groundwater, to land, or to a landfill unless the manufacturer has demonstrated to EPA's satisfaction in a notice under paragraph (e) of this section that the new substance has negligible groundwater migration potential.

(d) *Chemical substances that cannot be manufactured under this exemption.* A new chemical substance cannot be manufactured under this section, notwithstanding satisfaction of the criterion of paragraphs (c)(1) or (c)(2) of this section, if EPA determines, in accordance with paragraph (g) of this section, that the substance, any reasonably anticipated metabolites, environmental transformation products, or by-products of the substance, or any reasonably anticipated impurities in the substance may cause, under anticipated conditions of manufacture, processing, distribution in commerce, use, or disposal of the new chemical substance:

(1) Serious acute (lethal or sublethal) effects.

(2) Serious chronic (including carcinogenic and teratogenic) effects.

(3) Significant environmental effects.

(e) *Exemption notice.* (1) A manufacturer applying for an exemption under either paragraph (c)(1) or (c)(2) of this section must submit an exemption notice to the EPA at least 30 days before manufacture of the new chemical substance begins. Unless allowed as described by § 723.50(e)(1)(i), (e)(1)(ii), or (e)(1)(iii), exemption notices and modifications must be submitted to EPA on EPA Form No. 7710-25 via EPA's Central Data Exchange (CDX) using EPA-provided e-PMN reporting software in the manner set forth in this paragraph. Support documents related to these notices must also be submitted to EPA via CDX using e-PMN software in the manner set forth in this paragraph. See 40 CFR 720.40(a)(2)(iv) for information on how to obtain e-PMN software.

(i) *Paper-based submissions—(A)* Such notices, and any support documents related to these notices, submitted before April 6, 2010 must be submitted on paper either via U.S. mail to the Docu-

ment Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(B) All other notices and related support documents may be submitted on paper on or before April 6, 2011. All paper-based notices must be generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print EPA Form 7710-25 for submission to EPA. Paper notices must be submitted either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(ii) *Submissions on optical disc—(A)* Notices may be submitted as electronic files on optical disc on or before April 6, 2012. Notices submitted as electronic files on optical disc must be generated using e-PMN reporting software and be completed through the finalization step of the software. Optical discs containing electronic notices must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(B) Persons submitting on optical disc must still complete and submit on paper the Certification and Submitter Identification sections of EPA Form 7710-25 accompanying the optical disc.

(iii) *Submissions via CDX—(A)* On or after April 6, 2010, notices, and any related support documents, may be submitted electronically to EPA via CDX. Prior to submission to EPA via CDX, notices must be generated and completed on EPA Form 7710-25 using e-PMN reporting software.

(B) On or after April 6, 2012, all notices must be generated and completed

## § 723.50

## 40 CFR Ch. I (7–1–11 Edition)

on EPA Form 7710–25 using e-PMN reporting software and submitted electronically, along with any support documents related to these notices, to EPA via CDX.

(iv) Support documents for notices that are submitted before April 6, 2010 must be submitted on paper either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(2) The notice shall contain the information described below, pursuant to the referenced provisions of § 720.45.

(i) Manufacturer identity.

(ii) Chemical identity (§ 720.45(a)).

(iii) Impurities (§ 720.45(b)).

(iv) Known synonyms or trade names (§ 720.45(c)).

(v) Byproducts (§ 720.45(d)).

(vi) Production volume (§ 720.45(e)).

(A) Manufacturers submitting an exemption application under paragraph (c)(1) of this section will be assumed to be manufacturing at an annual production volume of 10,000 kilograms. Manufacturers who intend to manufacture an exempted substance at annual volumes of less than 10,000 kilograms and wish EPA to conduct its risk assessment based upon such lesser annual production level rather than a 10,000–kilograms level, may so specify by writing the lesser annual production volume in the appropriate box on the PMN form and marking the adjacent binding option box. Manufacturers who opt to specify annual production levels below 10,000 kilograms and who mark the production volume binding option box shall not manufacture more than the specific annual amount of the exempted substance unless a new exemption notice for a higher (up to 10,000 kgs) manufacturing volume is submitted and approved pursuant to this section.

(B) Manufacturers submitting an exemption under paragraph (c)(2) of this section shall list the estimated maximum amount to be manufactured during the first year of production and the

estimated maximum amount to be manufactured during any 12-month period during the first 3 years of production.

(vii) Description of intended categories of use (§ 720.45(f)).

(viii) For manufacturer-controlled sites, the manufacturer shall supply identity of manufacturing sites, process descriptions, and worker exposure and environmental release information (§ 720.45(g)); for sites not controlled by the manufacturer, processing and use operation descriptions, estimated number of processing and use sites, and worker exposure/environmental release information (§ 720.45(h)). A manufacturer applying for an exemption under paragraph (c)(1) of this section need not provide information on worker exposure and environmental release referenced in paragraphs (e)(2)(viii) of this section if such information is not known or not readily available to the manufacturer. To assist in reporting this information, manufacturers may obtain a copy of EPA's Guidance for Reporting Occupational Exposure and Environmental Release Information under 40 CFR 723.50, available from the Environmental Assistance Division at the address listed in paragraph (e)(1) of this section. Where worker exposure and environmental release information is not supplied by the manufacturer, EPA will generally apply "bounding estimates" (i.e., exposure estimates higher than those incurred by persons in the population with the highest exposure) to account for uncertainties in actual exposure and release scenarios.

(ix) Type and category of notice. The manufacturer must clearly indicate on the first page of the PMN form that the submission is a "TSCA section 5(h)(4) exemption notice," and must indicate whether the notice is being submitted under paragraph (c)(1) or (c)(2) of this section. Manufacturers of chemical substances that qualify for an exemption under both paragraph (c)(1) and (c)(2) of this section may apply for either exemption, but not both.

(x) Test data (§ 720.50).

(xi) Certification. In addition to the certifications required in EPA form 7710–25, the following certifications shall be included in notices under this

section. The manufacturer must certify that:

(A) The manufacturer intends to manufacture or import the new chemical substance for commercial purposes, other than in small quantities solely for research and development, under the terms of this section.

(B) The manufacturer is familiar with the terms of this section and will comply with those terms.

(C) The new chemical substance for which the notice is submitted meets all applicable exemption conditions.

(D) For substances manufactured under paragraph (c)(1) of this section, the manufacturer intends to commence manufacture of the exempted substance for commercial purposes within 1 year of the date of the expiration of the 30-day review period.

(xii) Sanitized copy of notice. (A) The manufacturer must make all claims of confidentiality in accordance with paragraph (1) of this section. If any information is claimed confidential, the manufacturer must submit a second copy of the notice, with all information claimed as confidential deleted, in accordance with paragraph (1)(3) of this section.

(B) If the manufacturer does not provide the second copy, the submission will be considered incomplete.

(3) *Incomplete notices.* If EPA receives a submission which does not include all of the information required under this paragraph (e) of this section, the submission will be determined to be incomplete by EPA. When a submission for a new chemical substance has been determined to be incomplete, a manufacturer reapplying for an exemption for the new chemical substance must submit a new exemption notice containing all the information required under this paragraph (e) of this section including a certification page containing an original dated signature; partial submissions sent to EPA to supplement notices declared incomplete will not be accepted. Photocopied pages from previously submitted exemption forms will be accepted provided that the certifications page contains an original dated signature.

(f) *Multiple exemption holders.* (1) A manufacturer who intends to manufacture a substance for which an exemp-

tion under this section was previously approved may apply for an exemption under paragraph (c)(1) or (c)(2) of this section; however, EPA will not approve any subsequent exemption application under paragraph (c)(1) of this section unless it can determine that the potential human exposure to, and environmental release of, the new chemical substance at the higher aggregate production volume will not present an unreasonable risk of injury to human health or the environment.

(2)(i) If EPA proposes to deny an exemption application for a substance for which another manufacturer currently holds an exemption, and that proposed denial is based exclusively on the cumulative human exposure or environmental release of the substance which precludes the EPA from determining that the subsequent applicant's activities will not present an unreasonable risk of injury to human health or the environment, the EPA will notify the first exemption holder that it must, within 21 days of its receipt of EPA's notice, either:

(A) Provide a new certification that it has commenced, or that it will commence, manufacture of the new chemical substance under this section within 1 year of the expiration of its exemption review period; or

(B) Withdraw its exemption for the new chemical substance.

(ii) If the first exemption holder does not respond to the EPA's notice under paragraph (f)(2)(i) of this section within the prescribed time period, EPA shall issue a notice of ineligibility to the first exemption holder under the provisions of paragraph (h)(2) of this section.

(g) *Review period.* (1) EPA will review the notice submitted under paragraph (e) of this section to determine whether manufacture of the new chemical substance is eligible for the exemption. The review period will end 30 days after receipt of the notice by the TSCA Document Control Officer. To provide additional time to address any unresolved issues concerning an exemption application, the exemption applicant may, at any time during the review period, request a suspension of the review period pursuant to the provisions of § 720.75(b) of this chapter.

(2) Upon expiration of the 30-day review period, if EPA has taken no action, the manufacturer may consider its exemption approved and begin to manufacture the new chemical substance under the terms described in its notice and in this section.

(h) *Notice of ineligibility*—(1) *During the review period.* If the EPA determines during the review period that manufacture of the new chemical substance does not meet the terms of this section or that there are issues concerning toxicity or exposure that require further review which cannot be accomplished within the 30-day review period, EPA will notify the manufacturer by telephone that the substance is not eligible. This telephone notification will subsequently be confirmed by certified letter that identifies the reasons for the ineligibility determination. The manufacturer may not begin manufacture of the new chemical substance without complying with section 5(a)(1) of the Act or submitting a new notice under paragraph (e) of this section that satisfies EPA's concerns.

(2) *After the review period.* (i)(A) If at any time after the review period specified in paragraph (g) of this section the Assistant Administrator for the Office of Prevention, Pesticides, and Toxic Substances ("the Assistant Administrator") makes a preliminary determination that manufacture of the new chemical substance does not meet the terms of this section, the Assistant Administrator will notify the manufacturer by certified letter that EPA believes that the new chemical substance does not meet the terms of the section.

(B) The manufacturer may continue to manufacture, process, distribute in commerce, and use the substance after receiving the notice under paragraph (h)(2)(i)(A) of this section if the manufacturer was manufacturing, processing, distributing in commerce, or using the substance at the time of the notification and if the manufacturer submits objections or an explanation under paragraph (h)(2)(ii) of this section. Manufacturers not manufacturing, processing, distributing in commerce, or using the substance at the time of the notification may not begin manufacture until EPA makes its final

determination under paragraph (h)(2)(iii) of this section.

(ii) A manufacturer who has received notice under paragraph (h)(2)(i)(A) of this section may submit, within 15 days of receipt of written notification, detailed objections to the determination or an explanation of its diligence and good faith efforts in attempting to comply with the terms of this section.

(iii) The Assistant Administrator will consider any objections or explanation submitted under paragraph (h)(2)(ii) of this section and will make a final determination. The Assistant Administrator will notify the manufacturer of the final determination by telephone within 15 days of receipt of the objections or explanation, and subsequently by certified letter.

(iv) If the Assistant Administrator determines that manufacture of the new chemical substance meets the terms of this section, the manufacturer may continue or resume manufacture, processing, distribution in commerce, and use in accordance with the terms of this section.

(v) If the Assistant Administrator determines that manufacture of the new chemical substance does not meet the terms of this section and that the manufacturer did not act with due diligence and in good faith to meet the terms of this section, the manufacturer must cease any continuing manufacture, processing, distribution in commerce, and use of the new chemical substance within 7 days of the written notification under paragraph (h)(2)(iii) of this section. The manufacturer may not resume manufacture, processing, distribution in commerce, and use of the new chemical substance until it submits a notice under section 5(a)(1) of the Act and part 720 of this chapter and the notice review period has ended.

(vi) If the Assistant Administrator determines that manufacture of the new chemical substance does not meet the terms of this section and that the manufacturer acted with due diligence and in good faith to meet the terms of this section, the manufacturer may continue manufacture, processing, distribution in commerce, and use of the new chemical substance if:

(A) It was actually manufacturing, processing, distributing in commerce,

## Environmental Protection Agency

## § 723.50

or using the chemical substance at the time it received the notification specified in paragraph (h)(2)(i)(A) of this section.

(B) It submits a notice on the new chemical substance under section 5(a)(1) of the Act and part 720 of this chapter within 15 days of receipt of the written notification under paragraph (h)(2)(iii) of this section. Such manufacture, processing, distribution in commerce, and use may continue unless EPA takes action under section 5(e) or 5(f) of the Act.

(3) Action under this paragraph does not preclude action under sections 7, 15, 16, or 17 of the Act.

(i) *Additional information.* If the manufacturer of a new chemical substance under the terms of this exemption obtains test data or other information indicating that the new chemical substance may not qualify under terms of this section, the manufacturer must submit these data or information to EPA within 15 working days of receipt of the information. If, during the notice review period specified in paragraph (g) of this section, the submitter obtains possession, control, or knowledge of new information that materially adds to, changes, or otherwise makes significantly more complete the information included in the notice, the submitter must send that information to the address listed on the notice form within 10 days of receiving the new information, but no later than 5 days before the end of the notice review period. The new submission must clearly identify the submitter and the exemption notice to which the new information is related. If the new information becomes available during the last 5 days of the notice review period, the submitter must immediately inform its EPA contact for that notice by telephone.

(j) *Changes in manufacturing site, use, human exposure and environmental release controls, and certain manufacturing volumes.* (1) Except as provided in paragraph (j)(6) of this section, chemical substances manufactured under this section must be manufactured at the site or sites described, for the uses described, and under the human exposure and environmental release controls de-

scribed in the exemption notice under paragraph (e) of this section.

(2) Where the manufacturer lists a specific physical form in which the new chemical substance will be manufactured, processed, and/or used, the manufacturer must continue manufacturing, processing, and/or using the new chemical substance in either the same physical form described in the notice under paragraph (e), or in a physical form which will not increase the human exposure to or environmental release of the new chemical substance over those exposures or releases resulting from the specified physical form (e.g., a manufacturer which specifies that the new chemical substance will be produced in a non-volatile liquid form generally may not change to a respirable powder form).

(3) The annual production volume of chemical substances manufactured under paragraph (c)(1) of this section for which the manufacturer designated a binding annual production volume pursuant to paragraph (e)(2)(vi) of this section must not exceed that designated volume.

(4) Any person who manufactures a new chemical substance under paragraph (c)(1) or (c)(2) of this section must comply with the provisions of this section, including submission of a new notice under paragraph (e) of this section, before:

(i) Manufacturing the new chemical substance at a site that was not approved in a previous exemption notice for the substance, except as provided in paragraph (j)(6) of this section.

(ii) Manufacturing the new chemical substance for a use that was not approved in a previous exemption notice for the substance.

(iii) Manufacturing the new chemical substance without employing the human exposure and environmental release controls approved in a previous exemption notice for the substance.

(iv) Manufacturing the new chemical substance in a physical form different than that physical form approved in a previous exemption notice for the substance and which form may increase the human exposure to, or environmental release of, the new chemical

substance over those exposures or releases resulting from the physical form approved in the previous notice.

(v) Manufacturing the chemical substance in annual production volumes above any volume designated by the manufacturer as binding under paragraph (e)(2)(vi) of this section in a previous exemption notice for the substance.

(5) In an exemption notice informing EPA of a change in site, use, or worker protection, or environmental release controls, the manufacturer is not required to provide all of the same information submitted to EPA in a previous exemption notice for that chemical substance. The new exemption notice, however, must indicate the identity of the new chemical substance; the manufacturer's name; the name and telephone number of a technical contact; and location of the new site, new worker protection or environmental release controls, and new use information. The notice must also include the EPA-designated exemption number assigned to the previous notice and a new certification by the manufacturer, as described in paragraph (e)(2)(xi) of this section.

(6)(i) A manufacturer may, without submitting a new notice, manufacture the new chemical substance at a site not listed in its exemption application under the following conditions:

(A) the magnitude, frequency, and duration of exposure of individual workers to the new chemical substance at the new manufacturing site is equal to, or less than, the magnitude, frequency, and duration of exposure of the individual workers to the new chemical substance at the manufacturing site for which the EPA performed its original risk-assessment pursuant to the original exemption notice; and

(B) Either (1) at the new manufacturing site, the manufacturer does not release to surface waters any of the new chemical substance, or any waste streams containing the new chemical substance; or (2) at the new manufacturing site, the manufacturer maintains surface water concentrations of the chemical substance, resulting from direct or indirect discharges from the manufacturing site, at or below 1 part per billion, or at or below an alter-

native concentration level approved by the Agency in writing or under the procedures described in paragraph (c)(2)(iii) of this section, using the water concentration calculation method described at §§ 721.90 and 721.91.

(ii) The manufacturer shall notify EPA of any new manufacturing site no later than 30 days after the commencement of manufacture of the new chemical substance under the exemption at the new manufacturing site as follows:

(A) The notification must contain the EPA-designated exemption number to which the notification applies, manufacturer identity, the street address of the new manufacturing site, the date on which manufacture commenced at the new site, the name and telephone number of a technical contact at the new site, any claim of confidentiality, and a statement that the notification is an amendment to the original exemption application under the terms of this section.

(B) The notification may be submitted on EPA form 7710-56 "Notice of Commencement of Manufacture;" however, the manufacturer must add the statement required under paragraph (j)(6)(ii)(A) of this section that the notification is an amendment to the original exemption.

(C) The notification must contain an original signature of an authorized official of the manufacturer.

(k) *Customer notification.* (1) Manufacturers of new chemical substances described in paragraphs (c)(1) and (c)(2) of this section must notify processors and industrial users that the substance can be used only for the uses specified in the exemption notice at paragraph (e) of this section. The manufacturer must also inform processors and industrial users of any controls specified in the exemption notice. The manufacturer may notify processors and industrial users by means of a container labeling system, written notification, or any other method that adequately informs them of use restrictions or controls.

(2) A manufacturer of a new chemical substance described in paragraph (c)(2) of this section may distribute the chemical substance only to other persons who agree in writing to not further distribute the substance until it has been reacted, incorporated into an



article, or otherwise rendered into a physical form or state in which environmental releases and human exposures above the eligibility criteria in paragraph (c)(2) of this section are not likely to occur.

(3) If the manufacturer learns that a direct or indirect customer is processing or using the new substance in violation of use restrictions or without imposing prescribed worker protection or environmental release controls, the manufacturer must cease distribution of the substance to the customer or the customer's supplier immediately unless the manufacturer is able to document each of the following:

(i) That the manufacturer has, within 5 working days, notified the customer in writing that the customer has failed to comply with the conditions specified in this section and the exemption notice under paragraph (e) of this section.

(ii) That, within 15 working days of notifying the customer of the non-compliance, the manufacturer received from the customer, in writing, a statement of assurance that the customer is aware of the terms of this section and the exemption notice and will comply with those terms.

(4) If, after receiving a statement of assurance from a customer under paragraph (k)(3)(ii) of this section, the manufacturer obtains knowledge that the customer has again failed to comply with any of the conditions specified in this section or the exemption notice, the manufacturer shall cease supplying the new chemical substance to that customer and shall report the failure to comply to EPA within 15 days of obtaining this knowledge. Within 30 days of its receipt of the report, EPA will notify the manufacturer whether, and under what conditions, distribution of the chemical substance to the customer may resume.

(1) *Confidentiality.* (1) If the manufacturer submits information to EPA under this section which the manufacturer claims to be confidential business information, the manufacturer must clearly identify the information at the time of submission to EPA by bracketing, circling, or underlining it and stamping it with "CONFIDENTIAL" or some other appropriate designation. Any information so identified will be

treated in accordance with the procedures in part 2 of this chapter. Any information not claimed confidential at the time of submission may be made available to the public without further notice.

(2)(i) Any person who asserts a claim of confidentiality for chemical identity under this paragraph (1) must provide a generic chemical name that is only as generic as necessary to protect the confidential chemical identity of the particular chemical substance. The name should reveal the specific chemical identity to the maximum extent possible.

(ii) The generic name provided by the manufacturer will be subject to EPA review and approval in accordance with the procedures specified in § 720.85(b)(6) of this chapter. The generic name provided by the submitter or an alternative selected by EPA under these procedures will be placed on a public list of substances exempt under this section.

(3) If any information is claimed confidential, the manufacturer must submit a second copy of the notice with all information claimed as confidential deleted. EPA will place the second copy in the public file.

(m) *Exemptions granted under superseded regulations.* Manufacturers holding exemptions granted under the superseded requirements of this section (as in effect on May 26, 1995) shall either continue to comply with those requirements (including the production volume limit) or apply for a new exemption pursuant to this section. EPA will not accept requests to amend exemptions granted under the superseded requirements; manufacturers wishing to amend such exemptions must submit a new exemption under paragraph (e) of this section. If a new exemption for a new chemical substance is granted under this exemption to the manufacturer holding an exemption under the superseded requirements, the exemption under the superseded requirements for such substance shall be void.

(n) *Recordkeeping.* (1) A manufacturer of a new chemical substance under paragraph (c) of this section must maintain the records described in this paragraph at the manufacturing site or

§ 723.175

40 CFR Ch. I (7-1-11 Edition)

site of importation for a period of 5 years after their preparation.

(2) The records must include the following to demonstrate compliance with this section:

(i) Records of annual production volume and import volume.

(ii) Records documenting compliance with the applicable requirements and restrictions of paragraphs (c), (e), (f), (h), (i), (j), and (k) of this section.

(3) Any person who manufactures a new chemical substance under the terms of this section must, upon request of a duly designated representative of EPA, permit such person at all reasonable times to have access to and to copy records kept under paragraph (n)(2) of this section.

(4) The manufacturer must submit the records listed in paragraph (n)(2) of this section to EPA upon request. Manufacturers must provide these records within 15 working days of receipt of such request.

(o) *Compliance.* (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) Submitting materially misleading or false information in connection with the requirements of any provision of this section is a violation of this section and therefore a violation of section 15 of the Act (15 U.S.C. 2614).

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

(4) EPA may seek to enjoin the manufacture or processing of a chemical substance in violation of this section, or act to seize any chemical substance manufactured or processed in violation of this section, or take other action under the authority of section 7 of the Act (15 U.S.C. 2606) or section 17 of the Act (15 U.S.C. 1616).

[60 FR 16346, Mar. 29, 1995, as amended at 60 FR 34465, July 3, 1995; 62 FR 17932, April 11, 1997; 64 FR 31989, June 15, 1999; 71 FR 33642, June 12, 2006; 75 FR 787, Jan. 6, 2010]

**§ 723.175 Chemical substances used in or for the manufacture or processing of instant photographic and peel-apart film articles.**

(a) *Purpose and scope.* (1) This section grants an exemption from the

premanufacture notice requirements of section 5(a)(1)(A) of the Toxic Substances Control Act (15 U.S.C. 2604(a)(1)(A)) for the manufacture and processing of new chemical substances used in or for the manufacture or processing of instant photographic and peel-apart film articles. This section does not apply to microorganisms subject to part 725 of this chapter.

(2) To manufacture a new chemical substance under the terms of this exemption, a manufacturer of instant photographic or peel-apart film articles must:

(i) Submit an exemption notice when manufacture begins under paragraph (i) of this section.

(ii) Comply with certain requirements to limit exposure to the new chemical substance under paragraphs (e), (f), (g), and (h) of this section.

(iii) Comply with all recordkeeping requirements under paragraph (j) of this section.

(b) *Definitions.* (1) *Act* means the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*).

(2) An *article* is a manufactured item (i) which is formed to a specific shape or design during manufacture, (ii) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (iii) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article and that may occur as described in § 710.2 of this chapter except that fluids and particles are not considered articles regardless of shape or design.

(3) The terms *byproduct*, *EPA*, *impurities*, *person*, and *site* have the same meanings as in § 710.3 of this chapter.

(4) The term *category of chemical substances* has the same meaning as in section 26(c)(2) of the Act (15 U.S.C. 2625).

(5) The terms *chemical substance*, *distribute in commerce*, *distribution in commerce*, *environment*, *manufacture*, *new chemical substance*, and *process* have the same meanings as in section 3 of the Act (15 U.S.C. 2602).