

40 C.F.R. § 799.5089

Chemical testing requirements for third group of high production volume chemicals (HPV3).

- (a) *What substances will be tested under this section?* Table 2 in paragraph (j) of this section identifies the chemical substances that must be tested under this section. For the chemical substances identified as “Class 1” chemical substances in Table 2 in paragraph (j) of this section, the purity of each chemical substance must be 99% or greater, unless otherwise specified in this section. For the chemical substances identified as “Class 2” chemical substances in Table 2 in paragraph (j), a representative form of each chemical substance must be tested. The representative form selected for a given Class 2 chemical substance should meet industry or consensus standards where they exist.
- (b) *Am I subject to this section?* (1) If you manufacture (including import) or intend to manufacture, or process or intend to process, any chemical substance listed in Table 2 in paragraph (j) of this section at any time from November 21, 2011 to the end of the test data reimbursement period as defined in 40 CFR 791.3(h), you are subject to this section with respect to that chemical substance.
- (2) If you do not know or cannot reasonably ascertain that you manufacture or process a chemical substance listed in Table 2 in paragraph (j) of this section during the time period described in paragraph (b)(1) of this section (based on all information in your possession or control, as well as all information that a reasonable person similarly situated might be expected to possess, control, or know, or could obtain without unreasonable burden), you are not subject to this section with respect to that chemical substance.
- (c) *If I am subject to this section, when must I comply with it?* (1)(i) Persons subject to this section are divided into two groups, as set forth in Table 1 of this paragraph: Tier 1 (persons initially required to comply) and Tier 2 (persons not initially required to comply). If you are subject to this section, you must determine if you fall within Tier 1 or Tier 2, based on Table 1 of this paragraph.

Table 1—Persons Subject to the Rule: Persons in Tier 1 and Tier 2

Persons initially required to comply with this section (Tier 1)	Persons not initially required to comply with this section (Tier 2)
Persons not otherwise specified in column 2 of this table that manufacture (as defined at TSCA section 3(7)) or intend to manufacture a chemical substance included in this section	A. Persons who manufacture (as defined at TSCA section 3(7)) or intend to manufacture a chemical substance included in this section solely as one or more of the following:
	— As a byproduct (as defined at 40 CFR 791.3(c));
	— As an impurity (as defined at 40 CFR 790.3);
	— As a naturally occurring substance (as defined at 40 CFR 710.4(b));
	— As a non-isolated intermediate (as defined at 40 CFR 704.3);

	—As a component of a Class 2 substance (as described at 40 CFR 720.45(a)(1)(i));
	—In amounts of less than 500 kg (1,100 lb) annually (as described at 40 CFR 790.42(a)(4)); or
	—For research and development (as described at 40 CFR 790.42(a)(5)). B. Persons who process (as defined at TSCA section 3(10)) or intend to process a chemical substance included in this section (see 40 CFR 790.42(a)(2)).

Note: kgs—kilograms, TSCA—Toxic Substances Control Act.

(ii) Table 1 of paragraph (c)(1)(i) of this section expands the list of persons in Tier 2, that is those persons specified in 40 CFR 790.42(a)(2), (a)(4), and (a)(5), who, while legally subject to this section, must comply with the requirements of this section only if directed to do so by EPA under the circumstances set forth in paragraphs (c)(4), (c)(5), (c)(6), (c)(7), and (c)(10) of this section.

(2) If you are in Tier 1 with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, you must, for each test required under this section for that chemical substance, either submit to EPA a letter-of-intent-to-test or apply to EPA for an exemption from testing. The letter-of-intent-to-test or the exemption application must be received by EPA no later than December 20, 2011.

(3) If you are in Tier 2 with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, you are considered to have an automatic conditional exemption and you will be required to comply with this section with regard to that chemical substance only if directed to do so by EPA under paragraphs (c)(5), (c)(7), or (c)(10) of this section.

(4) If no person in Tier 1 has notified EPA of its intent to conduct one or more of the tests required by this section on any chemical substance listed in Table 2 in paragraph (j) of this section on or before December 20, 2011, EPA will publish a Federal Register document that would specify the test(s) and the chemical substance(s) for which no letter-of-intent has been submitted and notify manufacturers in Tier 2A of their obligation to submit a letter-of-intent-to-test or to apply for an exemption from testing.

(5) If you are in Tier 2A (as specified in Table 1 in paragraph (c) of this section) with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, and if you manufacture, or intend to manufacture, this chemical substance as of November 21, 2011, or within 30 days after publication of the Federal Register document described in paragraph (c)(4) of this section, you must, for each test specified for that chemical substance in the document described in paragraph (c)(4) of this section, either submit to EPA a letter-of-intent-to-test or apply to EPA for an exemption from testing. The letter-of-intent-to-test or the exemption application must be received by EPA no later than 30 days after publication of the document described in paragraph (c)(4) of this section.

(6) If no manufacturer in Tier 1 or Tier 2A has notified EPA of its intent to conduct one or more of the tests required by this section on any chemical substance listed in Table 2 in paragraph (j) of this section within 30 days after the publication of the Federal Register document described in paragraph (c)(4) of this section, EPA will publish another Federal Register document that would specify the test(s) and the chemical substance(s) for which no letter-of-intent has been submitted, and notify processors in Tier 2B of their obligation to submit a letter-of-intent-to-test or to apply for an exemption from testing.

(7) If you are in Tier 2B (as specified in Table 1 in paragraph (c) of this section) with respect to a chemical substance listed in Table 2 in paragraph (j) of this section, and if you process, or intend to process, this chemical substance as of November 21, 2011, or within 30 days after publication of the Federal Register document described in paragraph (c)(6) of this section, you must, for each test specified for that chemical substance in the document described in paragraph (c)(6) of this section, either submit to EPA a letter-of-intent-to-test or apply to EPA for an exemption from testing. The letter-of-intent-to-test or the exemption application must be received by EPA no later than 30 days after publication of the document described in paragraph (c)(6) of this section.

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