

(4) When PCBs and PCB Items are being incinerated, additional periodic data shall be collected and maintained as specified by the Regional Administrator pursuant to § 761.40(d)(4).

(5) Upon any suspension of the operation of any incinerator pursuant to § 761.40(a)(8), the owner or operator of such an incinerator shall prepare a document. The document shall, at a minimum, include the date and time of the suspension and an explanation of the circumstances causing the suspension of operation. The document shall be sent to the appropriate Regional Administrator within 30 days of any such suspension.

(d) *Chemical waste landfill facilities.* Each owner or operator of a PCB chemical waste landfill facility shall collect and maintain until at least 20 years after the chemical waste landfill is no longer used for the disposal of PCBs the following information in addition to the information required in paragraph (b) of this section:

(1) Any water analysis obtained in compliance with § 761.41(b)(6)(iii); and

(2) Any operations records including burial coordinates of wastes obtained in compliance with § 761.41(b)(8)(ii).

(e) *High efficiency boiler facilities.* Each owner or operator of a high efficiency boiler used for the disposal of liquids between 50 and 500 ppm PCB shall collect and maintain for a period of 5 years the following information, in addition to the information required in paragraph (b) of this section:

(1) For each month PCBs are burned in the boiler the carbon monoxide and excess oxygen data required in § 761.10(a)(2)(iii)(A)(8) and § 761.10(a)(3)(iii)(A)(8);

(2) The quantity of PCBs burned each month as required in § 761.10(a)(2)(iii)(A)(7) and § 761.10(a)(3)(iii)(A)(7); and

(3) For each month PCBs (other than mineral oil dielectric fluid) are burned, chemical analysis data of the waste as required in § 761.10(a)(3)(iii)(B)(6).

(f) *Retention of Special Records by Storage and Disposal Facilities.* In addition to the information required to be maintained under paragraphs (b), (c), (d) and (e) of this section, each owner or operator of a PCB storage or disposal facility (including high efficiency boiler operations) shall collect and maintain for the time period specified in paragraph (b) of this section the following data:

(1) All documents, correspondence, and data that have been provided to the owner or operator of the facility by any State or local government agency and

that pertain to the storage or disposal of PCBs and PCB Items at the facility.

(2) All documents, correspondence, and data that have been provided by the owner or operator of the facility to any State or local government agency and that pertain to the storage or disposal of PCBs and PCB Items at the facility.

(3) Any applications and related correspondence sent by the owner or operator of the facility to any local, State, or Federal authorities in regard to waste water discharge permits, solid waste permits, building permits, or other permits or authorizations such as those required by Annex I—§ 761.40(d) and Annex II—§ 761.41(c).

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40 CFR Part 750

[FRL 1227-5]

Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Exemptions From the Polychlorinated Biphenyl (PCB) Processing and Distribution in Commerce Prohibitions

AGENCY: Environmental Protection Agency.

ACTION: Interim procedures for filing and processing petitions for exemptions from the PCB processing and distribution in commerce prohibitions under section 6(e)(3)(B) of the Toxic Substances Control Act (TSCA).

SUMMARY: Section 6(e)(3)(B) of TSCA allows EPA to grant, by rule, exemptions from the prohibitions on manufacturing, processing, and distribution in commerce of PCBs established pursuant to section 6(e)(3)(A) of TSCA. Since the PCB processing and distribution in commerce prohibitions will become effective July 1, 1979, EPA wishes to inform affected parties of the procedures that will be followed for the filing and processing of petitions for exemptions from the processing and distribution in commerce bans imposed by section 6(e)(3)(A)(ii) of TSCA. As this notice is strictly procedural, notice and public comment are unnecessary, and it is effective upon publication.

DATE: Petitions for exemptions from the 1979 processing and distribution in commerce prohibitions must be received by July 2, 1979.

ADDRESS: Petitions, preferably in triplicate, are to be sent to: Document Control Officer, (TS-793), Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M Street, S.W.,

Washington, D.C. 20460, Attn.: Document No. OTS/066002(PCB/PDE).

FOR FURTHER INFORMATION CONTACT:

John B. Ritch, Jr., Director, Office of Industry Assistance, Office of Toxic Substances, (TS-799), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Call the toll free number (800) 424-9065 (in Washington, D.C., 554-1404).

SUPPLEMENTARY INFORMATION:

Elsewhere in today's Federal Register, the final PCB Ban Rule is promulgated. The PCB Ban Rule implements the PCB manufacturing, processing, distribution in commerce, and use prohibitions of section 6(e) of TSCA. On November 1, 1978 (43 FR 50905), EPA published a notice similar to this one which provided an opportunity for the filing of petitions for exemptions from the PCB manufacturing prohibition, which ban is effective July 2, 1979. The PCB processing and distribution in commerce prohibitions are effective July 1, 1979. Section 6(e)(3)(B) provides an opportunity for affected persons to petition for an exemption from the prohibitions on processing and distribution in commerce of PCBs. Accordingly, EPA is issuing these procedures to describe the required contents of petitions, who may submit a class petition, and the procedures that EPA will follow in processing petitions for exemptions from the PCB processing and distribution in commerce prohibitions.

Unless EPA grants exemptions, all PCB processing and distribution in commerce will be banned after July 1, 1979 pursuant to section 6(e)(3)(A)(ii) of TSCA. These activities include, but are not necessarily limited to: the processing and distribution in commerce of dielectric fluid for PCB Transformers, PCB-Contaminated Transformers, PCB Railroad Transformers, and PCB Electromagnets; the distribution in commerce of PCB Articles (such as small PCB Capacitors); the processing (i.e., building) and distribution in commerce of PCB Equipment (including the manufacture of fluorescent light ballasts, television sets, air conditioners and microwave ovens and the sale of such PCB Equipment); the processing and distribution in commerce of PCB-contaminated hydraulic fluid; the processing and distribution in commerce of PCBs for servicing mining equipment; the processing and distribution in commerce of chemical substances and mixtures that contain 50 ppm or greater PCB as impurities or contaminants (including diarylide and phthalocyanine

pigments, some aluminum chloride, and some phenylchlorosilanes).

In contrast to the Interim Procedural Rules for Exemptions from the PCB Manufacturing Prohibition, the procedural rules published today for exemptions from the processing and distribution in commerce prohibitions provide for class petitions in certain limited circumstances. Allowance of some class petitions is an administrative necessity. EPA estimates that there are thousands of potential petitioners for exemptions from the prohibitions on PCB processing and distribution in commerce. The great majority of these petitions are expected to be concentrated in the areas of distribution of PCB Equipment and distribution of PCB-contaminated substances and mixtures. For example, virtually every retail appliance store, appliance repair service, and wholesale distributor of electrical equipment could need an exemption. Thus, allowing use of class petitions for such persons is a matter of practical reality.

In addition to the sheer number of possible petitioners in a given potential class, EPA evaluated the seriousness of potential risk of injury to health and the environment that could result from permitting a PCB activity to continue if it were granted an exemption. Those persons not allowed to submit class petitions are generally those whose activities involve significant quantities and/or highly concentrated PCB fluids processed or distributed in a non-totally enclosed manner. As a result, the potential risk associated with these activities is relatively high. In such cases it is more important that EPA evaluate petitions individually.

Petitions concerning the manufacture (*i.e.*, processing) of PCB Equipment involving incorporation of PCB Articles into equipment must be submitted on an individual basis. Although this activity in itself may present a low potential risk, the activity results in the wide dissemination of small PCB Capacitors. The disposal of such capacitors is not controlled once the capacitors are processed into PCB Equipment. Since most PCB Equipment manufacturers have converted to non-PCB Capacitors, the number of potential petitioners for exemptions to manufacture PCB Equipment should be small.

These Interim Procedural Rules provide for two types of class petitions and limit the use of each type to certain activities. The two types of class petitions are: (1) a class petition requiring a listing of, and certain information about, each person covered by the petition; and (2) a class petition

that does not require a listing of persons covered by the petition.

Once EPA had determined to allow class petitions for certain activities, the same factors previously described (number of potential petitioners and extent of risk) were again evaluated to determine which class petitions would have to identify each petitioner covered by the class petition. In general, those petitions thought likely to represent large numbers of potential petitioners engaged in enclosed or low concentration PCB distribution activities are those allowed to file class petitions without listing each individual petitioner.

Class petitions are not required for persons engaged in those activities permitted to submit class petitions. An individual involved in one of these activities has the choice of either submitting an individual petition or joining with others to submit a class petition. For class petitions, EPA will accept petitions prepared by one company (to which other companies may provide the required information), by a trade association on behalf of its members (as well as others), or by any other person on behalf of a group of persons requiring exemptions.

Persons who have already submitted petitions for exemptions to manufacture or import PCB Equipment pursuant to the Interim Procedural Rules of November 1, 1978 (43 FR 50905) need not submit new petitions, but must advise EPA if they still wish the Agency to act on their pending petitions. If they wish, such petitioners may submit additional information concerning their petitions. Similarly, EPA may request additional information concerning such petitions by letter to the petitioners.

All petitions for exemptions from the 1979 processing and distribution in commerce bans must be received by EPA by July 1, 1979. This deadline is being imposed to permit consolidation of all rulemaking on these petitions and to expedite the rulemaking to the greatest extent possible. The deadline is also the date on which the processing and distribution in commerce prohibitions of section 6(e)(3) of TSCA become effective. EPA estimates that a Notice of Proposed Rulemaking concerning exemptions from the processing and distribution in commerce bans will be published in September 1979, that the public hearing, if requested, will be held in October 1979, and that the Final Rule concerning exemptions will be published in January 1980. Any person who petitions EPA by July 1, 1979 to continue processing or distribution in commerce after July 1, 1979 may

continue his activity until EPA rules on his petition. Persons who do not so petition EPA will be subject to the July 1, 1979 ban on all processing and distribution in commerce of PCBs and PCB Items.

In determining whether to grant a petition for exemption to the PCB ban, EPA will apply the standards enunciated in section 6(e)(3)(B) of TSCA. Section 6(e)(3)(B) reads in pertinent part as follows:

* * * the Administrator may grant by rule such an exemption if the Administrator finds that—

- (i) an unreasonable risk of injury to health or environment would not result, and
- (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 such polychlorinated biphenyl.

Although EPA is not issuing a form for petitions, petitions must include the information described in § 750.31(d) of the Interim Procedural Rules.

Due to the need to grant or deny petitions on an expedited basis, and pursuant to the delegation of authority by the Administrator in the Preamble to the Final PCB Ban Rule, authority has been delegated to the Assistant Administrator for Toxic Substances to grant or deny petitions under section 6(e)(3)(B) of TSCA submitted pursuant to these interim procedures. The Assistant Administrator will rule on petitions subsequent to opportunity for an informal hearing.

The Interim Procedural Rules applicable to section 6(e) exemption proceedings are adapted from the TSCA section 6 procedural rules (40 CFR Part 750, 42 FR 61259, December 2, 1977, now titled Subpart A—General Procedural Rules).

EPA is aware that many participants at the informal hearings on the proposed PCB Ban and Marking and Disposal Rules presented information directly applicable to a PCB exemption rulemaking. To expedite Agency action on exemption petitions, participants in the PCB exemption informal hearing are permitted and encouraged to designate testimony from prior EPA informal rulemaking hearings on PCBs under TSCA. The exemption hearing panel is specifically authorized by the Interim Procedural Rules to reject repetitive testimony submitted earlier to EPA at a TSCA PCB informal hearing.

These rules are issued under authority of section 6(e) of the Toxic Substances Control Act, 15 U.S.C. 2605(e).

Dated: May 11, 1979.

Marilyn C. Bracken,

Acting Assistant Administrator for Toxic Substances.

Title 40 of the Code of Federal Regulations is amended by adding two Subpart headings, Subpart A—General Procedural Rules for §§ 750.1–750.9 and Subpart B—Manufacturing Exemption Procedural Rules for §§ 750.10–750.21, to the Table of Contents and a new Subpart C as set forth below:

Subpart A—Procedures for Rulemaking under Section 6 of the Toxic Substances Control Act. [§§ 750.1–750.9—Added at 42 FR 61259, December 2, 1977.]

Subpart B—Interim Procedural Rules for Manufacturing Exemptions. [§§ 750.10–750.21—Added at 43 FR 50905, November 1, 1978.]

Subpart C—Interim Procedural Rules for Processing and Distribution in Commerce Exemptions

Sec.

- 750.30 Applicability.
- 750.31 Filing of petitions for exemption.
- 750.32 Consolidation of rulemaking.
- 750.33 Notice of proposed rulemaking.
- 750.34 Record.
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- 750.36 Confidentiality.
- 750.37 Subpoenas.
- 750.38 Participation in informal hearing.
- 750.39 Conduct of informal hearing.
- 750.40 Cross-examination.
- 750.41 Final rule.

Authority: Section 6(e), Toxic Substances Control Act, 15 U.S.C. 2605(e).

Subpart C—Processing and Distribution in Commerce Exemption Procedural Rules

§ 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 subparagraphs (1) through (9) below.

(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 persons who distribute in commerce or further process the PCB Equipment. If a petition has been filed under subparagraph (a)(7) 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) *Petition Filing Date.* All petitions for exemptions from the 1979 processing and distribution in commerce prohibitions under section 6(e)(3)(A)(ii) must be received by the Hearing Clerk by July 2, 1979.

(c) *Where to File.* All petitions must be submitted to the following location: Document Control Officer (TS-793), Office of Toxic Substances, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Attn.: Docket Number OTS/066002 (PCB/PDE).

(d) *Content of Petition.* Each petition must contain the following:

(1) Name, address and telephone number of petitioner. See also subparagraphs (a)(1)–(9) 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 subparagraphs (1) through (8), 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 subparagraph (a)(1) (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 subparagraphs (d)(1), (d)(3) and (d)(5), 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 subparagraphs (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 subparagraphs (d)(1), (d)(3) and (d)(5), must be provided for each person represented by a petition under subparagraph (a)(2).

(iv) Persons filing petitions under subparagraph (a)(4) (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 subparagraph (a)(7) and (a)(8) (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 subparagraph (a)(7), the processor of PCB Articles into PCB Equipment must be identified in the petition. In the case of a petition under subparagraph (a)(8), the processor of PCB Equipment who files the petition must be identified.

(vi) Persons filing petitions under subparagraph (a)(9) (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 subparagraphs (a)(5) and (a)(6) must provide the information required by subparagraphs (d)(1) through (d)(8) for each petitioner named in the petition.

(e) 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.

§ 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 Rulemaking 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 the Assistant Administrator for Toxic Substances considers to be relevant to such rule and that the Assistant Administrator 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 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.

§ 750.35 Public comments.

(a) Main comments must be postmarked 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 postmarked 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. 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) 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) 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) and all deferred subpoena requests filed under paragraph (b)(1) 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 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 subparagraph (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 subparagraph (b), 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 subparagraph (e)(1). 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) Pursuant to the delegation of authority made in the Preamble to the Final Regulation for the PCB Manufacturing, Processing, Distribution in Commerce and Use Prohibitions, the Assistant Administrator for Toxic Substances will grant or deny petitions under section 6(e)(3)(B) of TSCA submitted pursuant to § 750.31. The Assistant Administrator 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.

[FR Doc. 79-18900 Filed 5-30-79; 8:45 am]

BILLING CODE 6560-01-M

ENVIRONMENTAL PROTECTION AGENCY
[40 CFR Part 761]
[FRL 1227-7; OTS-066001]
Polychlorinated Biphenyls (PCBs); Proposed Rulemaking for PCB Manufacturing Exemptions
AGENCY: Environmental Protection Agency.

ACTION: Proposed PCB exemption rule; notice of informal hearing.

SUMMARY: This notice lists the petitions received by EPA for exemption from the prohibition on PCB manufacturing and importation pursuant to section 6(e)(3) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e)(3). The notice also indicates, in most cases, which petitions for exemption EPA proposes to grant and which petitions the Agency proposes to deny.

DATES: Written comments, preferably in triplicate, must be received by the Hearing Clerk by July 2, 1979. Hearing Date and Time: July 9, 1979 at 10:00 a.m. in Washington, D.C. Requests to participate in the hearing must be received by the Hearing Clerk by July 2, 1979.

ADDRESSES: Send comments and requests to participate in the hearing to: Ms. Linda Thomson, Hearing Clerk, Office of Toxic Substances (TS-794), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attention: Docket Number OTS/066001 (PCB/ME). The hearing will be held in Washington, D.C. The exact location of the hearing will be made available by calling the toll-free number 800-424-9065.

FOR FURTHER INFORMATION CONTACT:

John B. Ritch, Director, Office of Industry Assistance (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone (800)-424-9065, or in Washington, D.C. call 554-1404.

SUPPLEMENTARY INFORMATION: Section 6(e)(3)(A) of TSCA (Pub. L. 94-469, 90 Stat. 2003, 15 U.S.C. 2601 *et seq.*) prohibits all manufacture (including importation) of PCBs as of January 1, 1979. EPA's regulation entitled PCB Manufacturing, Processing, Distribution in Commerce, and Use Prohibition Rule (PCB Prohibition Rule) which implements the prohibitions of section 6(e)(3) of TSCA, appears elsewhere in today's Federal Register. Section 6(e)(3)(B) of TSCA allows affected persons to petition EPA for exemptions

from the section 6(e)(3)(A) PCB prohibitions. On November 1, 1978, EPA published Interim Procedural Rules (43 FR 50905) for the filing and processing of petitions for exemptions from the PCB manufacturing prohibition of section 6(e)(3) of TSCA. More than seventy petitions for exemption have been received. These petitions have been consolidated into one rulemaking in accordance with § 750.12 of the Interim Procedural Rules (43 FR at 50906).

On January 2, 1979, the Agency announced (44 FR 108) that persons who had filed petitions for exemptions from the PCB manufacturing ban under section 6(e)(3)(B) of TSCA could continue the manufacturing or importation activity for which the exemption is sought until EPA has acted on the applicable petition.

The Interim Procedural Rules for manufacturing exemptions (43 FR 50905) will be applicable to this rulemaking. The official record of rulemaking is located in Room 447, East Tower, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone (202)-755-6956. It will be available for viewing and copying from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Hearing transcripts, hearing materials and submissions received will be added to the record as they become available.

To facilitate informed comment, EPA is indicating its proposed action on most exemption petitions. For EPA to grant a requested exemption, the Agency must make the findings required by section 6(e)(3)(B) of TSCA. That section reads as follows:

* * * the Administrator may grant by rule such an exemption if the Administrator finds that—

(i) An unreasonable risk of injury to health or environment would not result, and

(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 such polychlorinated biphenyl.

EPA wishes to advise commentors that for each exemption petition the Agency may request by letter additional information from the petitioner concerning his petition. This information would be supplementary to information requested in this Notice. The Agency will make such requests if it determines that it requires the information in order to adequately assess the petition.

Accordingly, persons may wish to file reply comments under § 750.15 of the Interim Procedural Rules (43 FR 50906) on any additional material filed by

petitioners in response to information requests from EPA.

Section 750.11(b) of the Interim Procedural Rules established a filing date of December 1, 1978 for all petitions for exemption from the TSCA section 6(e)(3) PCB manufacturing (and important) prohibition. Subsequent to the filing date, additional petitions have been received by the Agency. Due to the shortness of the original filing period of thirty days, EPA has accepted all late petitions. The Agency will decide on a case-by-case whether petitions for exemptions for PCB manufacturing and importation activities filed subsequent to the date of this Notice should also be accepted. If a PCB manufacturer or importer subject to the final PCB regulation (1) now wishes to file a petition for exemption and (2) did not earlier file a petition because he had good cause to believe his PCB activity was not subject to the proposed regulation (43 FR 24802, June 7, 1978), he should indicate the basis for his prior failure to file a petition and should request EPA to accept his late petition. No late petition will be accepted unless good cause can be shown for the failure to file on time. Whether or not late petitions are accepted will be announced at the informal hearing for this rulemaking. A supplemental notice of proposed rulemaking probably will not be issued as to such petitions.

In the preamble to the final PCB Prohibition Rule (see preamble section VI.C.1.), EPA states: ". . . the prohibition applies to the manufacture of any substance or mixture that contains PCB at 50 ppm or greater, including PCB that is an intermediate or 'impurity' or 'byproduct'. . . . While the production of PCBs under such circumstances may not be intentional and may have no independent commercial value, section 6(e) of TSCA applies to *any* production of PCBs and, therefore, covers such activities." EPA is aware that although the proposed rule included such PCBs in its coverage, some manufacturers may not have interpreted the proposed rule to include such PCBs and, therefore, may not have submitted a petition for an exemption from the manufacturing prohibition. As discussed above, EPA will accept petitions from such persons during the comment period for this rule, if the required showing of good faith in not filing earlier is made.

Several persons requested that petitions be accepted on a class basis. They argued that PCB equipment manufacturers should be able to petition for exemptions on behalf of those customers who are also PCB equipment

manufacturers or distributors as defined in the proposed regulation.* In view of the change which has been made concerning restrictions on the manufacture of PCB equipment in the final PCB Prohibition Rule,** EPA will not accept exemption petitions on a class basis in this rulemaking. However, the Agency has addressed the question of class petitions in the Interim Procedural Rules which establish procedures for filing and processing exemption petitions from the July 1, 1979 PCB processing and distribution in commerce prohibitions. These Interim Procedural Rules are found elsewhere in today's *Federal Register*.

It is the intent of EPA to grant or deny the petitions for exemption from the prohibition of the manufacture (including importation) of PCBs subject to this rulemaking prior to August 1, 1979.

Below are listed the exemption petitions that EPA has received. These exemptions have been categorized according to the nature of the petition, and the categories are indicated by a numbered key. The Agency's proposed action on the petitions follows the listing.

Petitioner and Basis for Petition

Abolite Lighting, Inc., P.O. Box 237, West Lafayette, OH 43845.¹
 Advance Transformer Co., 2950 North Western Ave., Chicago, IL 60618.²
 Aluminum Company of America, 1501 Alcoa Building, Pittsburgh, PA 15219.³
 American Hoechst Corp., Route 202-206 North, Somerville, NJ 08876.⁴
 Binney and Smith, Inc., 1100 Church Lane, P.O. Box 431, Easton, PA 18042.⁴
 Borden, Inc., Borden Chemical Division, 630 Glendale-Milford Rd., Cincinnati, OH 45215.⁵

*See the definition of "PCB" in Section 761.2(q) of the proposed PCB Prohibition Rule (43 FR at 24813, June 7, 1978) and the definition of "PCB Equipment" in Section 761.2(v) of the final PCB Disposal and Marking Rule (43 FR at 7157, February 17, 1978).

**This change classifies the manufacture of PCB equipment as "processing" subject to prohibition as of July 1, 1979 under Section 6(e)(3)(A)(ii) of TSCA. The proposed regulation classified such activity as "manufacture" subject to prohibition as of January 1, 1979 under Section 6(e)(3)(A)(i). For further discussion, see Section VI.B.1.a. of the preamble to the final PCB Prohibition Rule, which appears elsewhere in today's *Federal Register*.

¹Requests an exemption in order to manufacture either fluorescent or High Intensity Discharge (HID) lighting fixtures with a PCB capacitor or PCB ballast transformer.

²Requests an exemption in order to manufacture PCB ballast transformers which can be used by its customers in the manufacture of fluorescent and HID lighting fixtures.

³Requests an exemption in order to continue manufacturing aluminum chloride which is contaminated with PCBs.

⁴Requests an exemption to either manufacture or import diarylide yellow or phthalocyanine pigments.

Chemetron Pigments, Division of Chemetron Corp., 491 Columbia Ave., Holland, MI 49423.⁶
 Chemical Waste Management Limited, 211 King Street, P.O. Box 1268, St. Catherines, Ontario, Canada L2R7A7.⁷
 Ching Mei U.S.A. Ltd., 350 Fifth Ave., Rm. 1825, New York, NY 10001.⁸
 Cincinnati Milacron Inc., 4701 Marburg Ave., Cincinnati, OH 45209.⁹
 Colt Industries, Inc., Fairbanks Morse Pump Division, 3601 Fairbanks Ave., Kansas City, KS 66110.⁷
 Columbia Lighting Inc., Terminal Annex, Box 2787, Spokane, WA.¹⁰
 Control Data Corporation, Autocon Industries Inc., Subsidiary of Control Data Corp., 2300 Berkshire Lane, Minneapolis, MN 55441.⁷
 Copeland Corp., Sidney, OH 45365.⁸
 Crouse-Hinds Co., P.O. Box 4999, Wolf and Seventh North St., Syracuse, NY 13221.¹
 Dainichiseika Color & Chemicals, America, Inc., 20 Hook Mountain Rd., Pine Brook, NJ 07058.⁴
 Dainippon Ink & Chemicals America, Inc., 200 Park Ave., New York, NY 10017.⁴
 Day-Brite Lighting, 1015 South Green St., P.O. Drawer 1687, Tupelo, MS 38801.¹
 Dow Corning Corp., Midland, MI 48640.⁹
 Dunham-Bush, Inc., 101 Burgess Road, Harrisonburg, VA 22801.¹⁰
 Emerson Quiet Kool Corp., 400 Woodbine Ave., Woodbridge, NJ 07095.⁸
 Emerson Electric Co., Industrial Control Division, 3300 S. Standard St., P.O. Box 1679, Santa Ana, CA 92702.¹⁰
 Emerson Electric Company, Gearmaster Division, 1809 S. Route 31, McHenry, IL 60050.¹⁰
 General Electric Company, 3135 Easton Turnpike, Fairfield, CT 06431.^{1 11 2 18}
 Globe Illumination Company, 1515 W. 178th St., Gardena, CA 90248.¹
 Guardian Chemical Corp., Eastern Chemical Division, 230 Marcus Blvd., Hauppauge, NY 11787.¹²
 Guardian Light Co., 5125 W. Lake St., Chicago, IL 60644.¹
 Halstead Industries, Inc., Halstead and Mitchell/Division, Highway 72 West, Scottsboro, AL 35768.¹⁰
 Harmon Colors Corp., 550 Belmont Ave., Haledon, NJ 07508.⁴
 Harvey Hubbell, Inc., (Lighting Division), 2000 Electric Way, Christiansburg, VA 24073.¹

⁶Requests an exemption in order to import into the United States PCB waste material for disposal.

⁷Requests an exemption in order to incorporate PCBs as an additive component in rigid PVC vibration damping devices used in large machine tools.

⁸Requests an exemption in order to use PCB capacitors in the manufacture of electric pumps and water and waste water control systems.

⁹Requests an exemption in order to use PCB capacitors in the manufacture of air conditioners or air conditioner sub-assemblies.

¹⁰Requests an exemption in order to continue manufacturing an unspecified chemical using a PCB contaminated intermediate.

¹¹Requests an exemption in order to manufacture motors using a PCB capacitor or to manufacture another product or system using such a motor.

¹²Requests an exemption in order to continue manufacturing phenylchlorosilanes with unintentional PCB impurities.

¹³Requests an exemption in order to sell a small quantity of PCBs.

Hercules, Inc., 910 Market St., Wilmington, DE 19889.⁴

Hills-McCanna Co., 400 Maple Ave., Carpentersville, IL 60110.¹⁰

Hilton-Davis Chemical Co., Division of Sterling Drug Inc., 2235 Langdon Farm Road, Cincinnati, OH 45237.⁴
 Honeywell, Inc., 200 Smith St., Waltham, MA 02154.¹³

ICI Americas, Inc., Wilmington, DE 19897.⁴
 International Telephone & Telegraph Corp., 260 Cochituate Road, Suite 109, Framington, MA 01701.¹

Insel Corp., 825 Third Ave., New York, NY 10022.¹⁴

Keene Corporation-Lighting Division, Industrial Way, Wilmington, MA 01887.¹
 Keystone Lighting Corp., Inc., U.S. 13 & Beaver Streets, Bristol, PA 19007.¹

Kramer Trenton Co., Box 820, Trenton, NJ 08805.¹⁰

Lightolier, Inc., 346 Claremont Ave., Jersey City, NJ 07305.⁴

Litton Industrial Products, Inc., Louis Allis Division, 16555 West Ryerson Road, New Berlin, WI 53151.¹⁵

Litton Microwave Cooking, Litton Systems, Inc., P.O. Box 9461, Minneapolis, MN 55440.¹⁶

Litton Systems Inc., Jefferson Electric Division, 840 South 25th Ave., Bellwood, IL 60104.¹

Marathon Electric Manufacturing Corp., P.O. Box 1407, Wausau, WI 54401.¹⁰

McGraw-Edison Co., Area Lighting Div., 7601 Durand Ave., Racine, WI 53405.¹

McGraw-Edison Co., Kitchen Appliance Division, P.O. Box 1111, Chattanooga, TN 37401.¹⁶

Metalux Corp., P.O. Box 1207, Americus, GA 31709.¹

The Miller Company, Lighting Division, 99 Center Street, Meridian, CT 06450.¹

Montedison USA, Inc., 1114 Ave. of the Americas, New York City, NY 10036.⁴

Nagase America Corp., 500 Fifth Ave., New York, NY 10036.⁴

National Services Industries, Lithonia Lighting Div., 1335 Industrial Blvd. NW., Conyers, GA 30207.¹

National Solid Waste Management Association, 1120 Connecticut Ave., NW., Washington, DC 20036.⁵

Phillips Petroleum Company, 10 C2 Phillips Bldg., Bartlesville, OK 74004.¹⁷

Phthalchem Inc., 6675 Beechlands Dr., Cincinnati, OH 45237.⁴

Pope Chemical Corp., 33 Sixth Ave., Paterson, NJ 07524.⁴

Prescolite, 1251 Doolittle Drive, San Leandro, CA 94557.¹

¹³Requests an exemption in order to import PCB equipment and small PCB capacitors for purposes of repair, replacement and trade-in.

¹⁴Requests an exemption in order to import a dielectric called Electrophenyl T-80 which is contaminated with PCB.

¹⁵Requests an exemption in order to use PCB capacitors in the manufacture of power conversion equipment.

¹⁶Requests an exemption in order to use PCB capacitors in the manufacture of microwave ovens.

¹⁷Requests an exemption in order to import PCBs for use in research and development of an unspecified chemical intermediate.

Ridgeway Color & Chemical of Wheelabrator-Fry, Inc., 75 Front St., Ridgeway, PA 15853.⁴

Rollins Environmental Services, Inc., One Rollins Plaza, P.O. Box 2349, Wilmington, DE 19899.⁵

Sandoz, Inc., Sandoz Colors and Chemicals Division, 59 Route 10, East Hanover, NJ 07936.⁶

Sim-Kar Lighting Fixture Co., Inc., 601 East Cayuga Street, Philadelphia, PA 19120.⁷

Spero Electric Corp., 18222 Lanken Ave., Cleveland, OH 44119.⁸

Sta-Rite Industries Inc., Suite 3300, 977 East Wisconsin Ave., Milwaukee, WI 53202.⁹

Stauffer Chemical Company, on behalf of SWS Silicones Corp. Subsidiary, Westport, CT 06880.¹⁰

Steelcase Inc., 1120 36th Street, Grand Rapids, MI 49501.¹¹

Sterner Lighting Systems, Inc., 351 Lewis Ave., NW, Winstead, MN 55395.¹²

Sun Chemical Corp., Pigments Division, Research & Operations Center, 4625 East Ave., Cincinnati, OH 45232.¹³

Sumitomo Corporation of America, 345 Park Ave., New York, NY 10022.¹⁴

Tappan Air Conditioning-Smith Jones, Inc., 206 Woodford Ave., Elyria, OH 44035.¹⁵

Tivian Chemical Associates, 720 Union Street, Manchester, NH 03104.¹⁶

Thomas Industries, Inc., Benjamin Division, P.O. Box 180, Sparta, TN 38583.¹⁷

Toyo Ink America, Inc., 560 Sylvan Ave., Englewood Cliffs, NJ 07632.¹⁸

Universal Manufacturing Corp., 29 E. 6th Street, Paterson, NJ 70509.¹⁹

Vivitar Corp., 1630 Stewart Street, Santa Monica, CA 90406.²⁰

Weatherking, Inc., P.O. Box 20434, Orlando, FL 32814.²¹

Westinghouse Electric Corp., Lighting Business Unit, P.O. Box 824, Vicksburg, MS 39180.^{1, 10}

Whiteway Manufacturing Co., 1736 Dreman Avenue, Cincinnati, OH 45223.¹

Wide-Lite Corp., P.O. Box 606, Redwood Rd. & IH35, San Marcos, TX 78666.¹

Wylain, Inc., Mold Cast Lighting Division, I-80 at Maple Avenue, Pine Brook, NJ 07058.¹

EPA has completed a preliminary analysis of the above-listed petitions for exemption from the PCB Prohibition Rule which was promulgated elsewhere in today's *Federal Register*. The Agency has decided that it will not evaluate at this time any of the 49 requests for exemption from the prohibitions on manufacturing equipment which contains a PCB capacitor. (The requests

which fall in this category are those footnoted with numbers 1, 2, 7, 8, 10, 13, 15, 16, 20.) EPA is not processing these requests in the present proceeding because, as previously noted, the Agency defines in the final PCB Prohibition Rule the activity of "manufacturing" equipment utilizing a PCB capacitor as "processing" of PCBs. Processing of PCBs is not subject to section 6(e)(3) until July 1, 1979.

EPA will consider petitions concerning PCB processing activities in a subsequent proceeding. Persons who filed requests for exemptions for this activity will not be required to resubmit. However, they will be required under Interim Procedural Rules, found elsewhere in today's *Federal Register*, to indicate to EPA in writing if they wish their petitions to be considered as requests for exemption from the July 1, 1979 prohibition on processing or distribution in commerce of PCBs.

Imports of PCB Wastes

Chemical Waste Management, Ltd., the National Solid Waste Management Association, and the Rollins Environmental Services, Inc., petitioned to continue importation of PCB waste material into the U.S. for purposes of disposal. These petitions have been mooted by the PCB Prohibition Rule published elsewhere in today's *Federal Register*. For the reasons explained in the preamble to that regulation, EPA has decided to allow imports and exports of PCB waste for disposal (so long as such disposal is in accordance with Subpart B of the regulation) until May 1, 1980. Accordingly, no petitions for importation of PCB wastes for disposal are required.

Manufacture and Import of Pigments

EPA proposes to grant all of the requests to either manufacture or import diarylide and phthalocyanine pigments containing more than 50 ppm PCB. (These petitions are identified in the above list with footnote number 4). Information submitted with the requests and testimony and written comments received during the rulemaking for the PCB Manufacturing, Processing, Distribution in Commerce and Use Prohibition Rule which EPA promulgated today indicates (1) granting these exemption requests would not result in an unreasonable risk of injury to health or the environment and (2) good faith efforts are being made by the pigment industry to develop alternative processes for manufacturing the diarylide and phthalocyanine pigments without PCB contamination. Most of these pigments have PCB concentrations

in the range of several hundred parts per million. These PCBs cannot easily be separated from the pigments because of the structural similarity of the PCBs with the pigments. Once manufactured, the pigments are mixed with other substances to form paints, inks, and a variety of other products.

In deciding whether to permit continued pigment manufacture, EPA has considered the relatively limited human and environmental exposure to PCBs involved and the economic effects associated with prohibiting manufacture of these pigments. The greatest potential for exposure is in the application of the paints and inks using these pigments. These products contain far less than 50 ppm PCB because of the dilution that takes place when the pigment is mixed with the medium it is coloring. As a result, the health and environmental risks are relatively small. At the present time, these particular pigments account for most of the yellow and blue pigments in use and a significant portion of the total pigment market. If the manufacture of these pigments is not permitted until the conversion to alternative processes is complete, there will be a severe impact on the pigment industry as well as its customers in the paint and graphic arts industries.

The potential costs of compliance will be greatly reduced if an exemption is granted while process changes to reduce PCB contamination are made. It is anticipated that such changes can be made over a period of a year or two. The increased health and environmental risk will be relatively small as there will be limited exposure to PCBs as a result of the exemption.

Furthermore, the granting of these exemption requests will be consistent with the authorization for continued use of phthalocyanine and diarylide yellow pigments which is contained in the final PCB Prohibition Rule.

EPA especially invites comment not only on the merits of granting the above described petitions, but also on the terms and conditions which the Agency should apply to such exemptions if granted.

Import of PCB Equipment

Honeywell Inc.'s request to be permitted to continue importing PCB equipment will not be evaluated in this proceeding but will be evaluated (if requested) in the future rulemaking dealing with exemptions from the prohibition on processing and distribution in commerce of PCBs. The PCB Prohibition Rule which EPA promulgated today treats importation of PCB equipment in the same manner as

⁴ Requests an exemption in order to continue importing a polysiloxane intermediate which is used in the manufacture of heat curable silicone rubber products and which is contaminated with 600 ppm PCBs. Chemical (polysiloxane intermediate) is described generically because petitioner has claimed confidential treatment for identity of chemical.

⁵ Requests an exemption in order to continue unspecified activity which may be subject to either January 1, 1979 or July 1, 1979 prohibitions. See later discussion in this Notice.

⁶ Requests an exemption in order to use PCB capacitors in the manufacture of photographic enlargers.

the domestic assembly of such equipment and, therefore, such activity is not prohibited until July 1, 1979.

Other Petitions

Guardian Chemical Corporation's request to be permitted to sell small quantities of 4,4'-Dichlorodiphenylsulfane as a laboratory reagent also will not be evaluated now but will be evaluated (if requested) in the processing and distribution in commerce exemption proceeding. Guardian did not indicate that they in any way manufacture PCBs. However, it does appear that the activity which is seeks to continue is the "distribution in commerce" of PCBs.

Similarly, the petition submitted by Cincinnati Milacron which, if granted, would permit the company to continue to use PCBs as an additive component in their manufacture of polyvinyl chloride vibration damping devices will not be considered now but will be considered in the future proceeding, if requested. The reason for delaying the processing of Cincinnati Milacron's petition is that EPA has determined that the company's use of PCBs is "processing" as that term is defined by the PCB Prohibition Rule and is therefore not subject to this proceeding.

Exemption Requests Proposed To Be Denied

EPA proposes to deny Intsel Corporation's request to import Electrophenyl T-60 and Phillips Petroleum Company's request to import significant quantities of PCBs for unspecified research and development purposes. Neither of the requestors have shown that they are making a good faith effort to develop substitutes which do not contain 50 ppm or greater PCBs, nor that the adverse economic or other consequences of EPA's denying the requests outweigh the potential harm to health and the environment of EPA's granting the requests.

Exemption Requests for Which a Determination Is Not Proposed

EPA has not proposed its disposition of the requests received from Alcoa which respect to its manufacture of aluminum chloride and the General Electric Co. with respect to its manufacture of phenylchlorosilanes due to the technical complexity of the activities for which exemptions are sought.

Before making a determination with respect to these exemption petitions, the Agency will seek, by means of written requests to the companies and by this notice, further comments and/or data.

Additional information on these petitions is given below.

Alcoa requested a one-year exemption for the manufacture of approximately 132.77 million pounds of aluminum chloride at its facility in Anderson County, Texas. The process would result in the annual production of approximately 9,294 pounds of PCBs, 95% of which is concentrated and disposed of as a PCB mixture. The remaining 5% represents an impurity in the aluminum chloride which Alcoa sells for a variety of uses. Comments and data are requested on the health and environmental risks that would be posed by granting Alcoa's exemption and also on the risks associated with using the aluminum chloride for applications other than smelting aluminum. In particular, EPA is interested in information regarding processes for the production of aluminum chloride which do not produce PCBs. In addition, EPA invites comments on the economic or other adverse impacts that denial of the exemption would have on Alcoa's users of this product.

General Electric seeks an exemption to continue the manufacture of phenylchlorosilanes with unintentional PCB impurities. The manufacturing process results in approximately 50,000 pounds per year of PCBs which are removed and concentrated for disposal in an on-site incineration facility in Waterford, New York. The phenylchlorosilanes are used in the production of a number of high performance silicone products for various industrial, aerospace, and defense applications. Comments and data are requested on the health and environmental risk associated with granting or denying General Electric's exemption petition, on alternative methods of manufacturing phenylchlorosilanes without PCB contamination, and on the impact of denying this petition on the users of this chemical.

EPA has also not proposed its disposition of the petition of Tivian Chemical Associates. EPA is seeking to clarify whether Tivian's activity for which exemption is sought is subject to the January 1, 1979 prohibition on PCB manufacture and importation, or rather to the July 1, 1979 prohibition on PCB processing and distribution in commerce.

In addition, EPA has not proposed its disposition of the petitions of Dow Corning Corporation and Stauffer Chemical Company. EPA currently does not have sufficient information to determine whether exemptions should be proposed for these companies. Dow

Corning has not identified the substance which it wishes to manufacture and the amount of PCB contamination in the chemical intermediate. Stauffer has not provided sufficient information concerning the identity of products which may be subject to PCB contamination. EPA will seek, by means of written requests to both companies, to clarify the identity of the products identified in the petitions of the companies, and the nature of the manufacturing processes, which includes determining whether intermediates are contaminated during the manufacturing process.

Section 750.13 of the Interim Procedural Rules does not require EPA to announce its proposed disposition of exemption petitions in a Notice of Proposed Rulemaking. Due to the need to expedite action on the exemption petitions, EPA will not publish a subsequent notice concerning the Alcoa, General Electric, Tivian, Dow Corning and Stauffer petitions.

Dated: May 11, 1979.

Marilyn C. Bracken,
Acting Assistant Administrator for Toxic Substances.

[FR Doc. 79-16901 Filed 5-30-79; 8:45 am]
BILLING CODE 6560-01-M

[40 CFR Part 761]

[FRL 1227-6]

Polychlorinated Biphenyls (PCBs); Amendment to Criteria for Chemical Waste Landfills

AGENCY: Environmental Protection Agency.

ACTION: Proposed amendment to final rule; notice of informal hearing.

SUMMARY: This proposed rule would modify Annex II of Subpart E of the Polychlorinated Biphenyls regulation promulgated elsewhere in today's Federal Register under the authority of section 6(e) of the Toxic Substances Control Act. The proposed rule would amend the criteria for chemical waste landfills by reducing the required distance between the bottom of the chemical waste landfill liner system and the historical high water table from fifty feet to five feet.

DATES: Written comments, preferably in triplicate, must be received prior to the close of business July 16, 1979. Informal hearing date and time (if a hearing is requested): August 6, 1979, at 10:00 a.m. in Washington, DC. Requests to hold a hearing and to participate in the hearing must be received prior to the close of