

Sunshine Act Meetings

Federal Register

Vol. 48, No. 1

Monday, January 3, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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Civil Rights Commission.....	1
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1

COMMISSION ON CIVIL RIGHTS

PLACE: Room 512, 1121 Vermont Avenue, N.W., Washington, D.C.

DATE AND TIME: January 10, 1983, 9:30 a.m.—12:00 noon; 1:30—4:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

- I. Approval of Agenda.
- II. Approval of Minutes of Last Meeting.
- III. Review of the Religious Discrimination Statement.
- IV. Review of Staff Comments on the Analysis of Executive Order 11246 by the Senate Committee on Labor and Human Resources.
- V. Discussion of a Proposal for the Commission to Establish Business-Labor Advisory Committees.
- VI. State Advisory Committee Rechartering.
 - A. Iowa.
 - B. North Dakota.
 - C. Texas.
 - D. Utah.
 - E. Virginia.
- VII. Illinois Advisory Committee Report Entitled *Housing: Chicago Style*.
- VIII. Connecticut Advisory Committee Report Entitled *Hate Groups and Acts of Bigotry*.
- IX. Oregon Advisory Committee Report Entitled *External Review of Police Misconduct in Portland, Oregon*.

X. Civil Rights Developments in the Northwestern Region.

- XI. Staff Director's Report.
 - A. Status of Funds.
 - B. Personnel Report.
 - C. Office Directors' Reports.

PERSON TO CONTACT FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 254-6697.

[FR Doc. 8-1871-82 Filed 12-29-82; 11:10 am]

BILLING CODE 6335-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission meeting, Wednesday, January 5, 1983, 10 a.m.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW, Washington, D.C.

STATUS:

Open to the Public

1. *Special Packaging Requirements Under the Poison Prevention Packaging Act: ANPR.*

The staff will brief the Commission on a draft Advance Notice of Proposed Rulemaking (ANPR) which solicits suggestions for methods to improve the effectiveness of child-resistant packaging and which requests comments on specific suggested revisions to the child and adult test procedures.

Closed to the Public

2. *Compliance Report.*

The staff will brief the Commission of a special compliance report.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Avenue, Bethesda, MD 20207, 301-492-6800.

[S-1873-82 Filed 12-29-82; 3:57 pm]

BILLING CODE 6355-01-M

3

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9 a.m., January 7, 1983.

PLACE: Hearing Room 1, 1100 L Street, NW., Washington, D.C. 20573.

STATUS: Closed.

MATTER TO BE CONSIDERED: 1. Docket No. 82-58: Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Venezuela Trade—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-1870-82 Filed 12-29-82; 10:55 am]

BILLING CODE 6730-01-M

4

TENNESSEE VALLEY AUTHORITY (MEETING NO. 1303)

TIME AND DATE: 1 p.m. (EST), Wednesday, January 5, 1983.

PLACE: TVA West Tower Auditorium.

STATUS: Open.

C—Power Items

- C1. Adoption of supplemental resolution authorizing 1983 Series A power bonds.
- C2. Resolution authorizing the Chairman and other executive officers to take further action relating to issuance and sale of 1983 Series A power bonds.

D—Personnel Actions

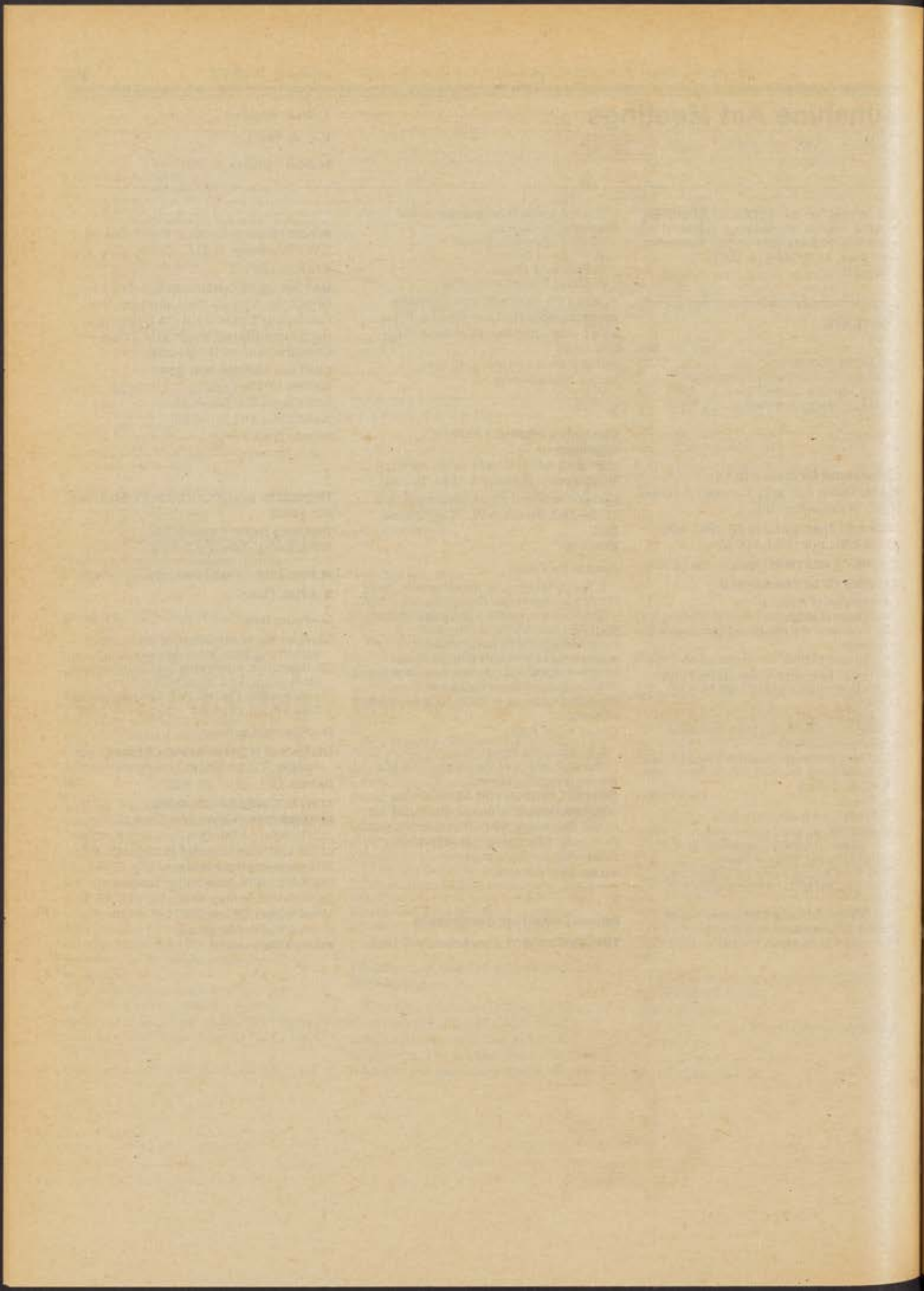
- D1. Revised pay plan for certain management and physician schedule employees.

DATED: December 29, 1982.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

[S-1872-82 Filed 12-29-82; 3:49 pm]

BILLING CODE 8120-01-M



federal register

**Monday
January 3, 1983**

Part II

Department of Labor

**Employment Standards Administration,
Wage and Hour Division**

**Minimum Wages for Federal and
Federally Assisted Construction; General
Wage Determination Decisions**

DEPARTMENT OF LABOR

Employment Standards
Administration, Wage and Hour
DivisionMinimum Wages for Federal and
Federally Assisted Construction;
General Wage Determination
Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large

volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the *Federal Register* without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas
Decisions to General Wage
Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the

localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the *Federal Register* without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modification to General Wage
Determination Decisions

The numbers of the decisions being modified and their dates of publication in the *Federal Register* are listed with each State.

Alabama: AL82-1062	November 19, 1982
California:	
CAB2-5112	July 15, 1982
CAB2-5120	August 27, 1982
CAB2-5118	August 20, 1982
CAB2-5122	September 3, 1982
Hawaii: HB2-5123	October 1, 1982
Indiana:	
IN80-2082	September 26, 1980
IN80-2015	April 11, 1980
Louisiana:	
LAR2-4021	May 7, 1982
LAR2-4022	May 7, 1982
LAR2-4053	November 5, 1982
Nevada: NV82-5113	August 6, 1982
New York:	
NY81-3061	September 11, 1981
NY82-3025	September 3, 1982
Texas:	
TX82-4046	October 1, 1982
TX82-4054	November 5, 1982

Supersedeas Decisions to General Wage
Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the *Federal Register* are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Indiana: IN80-2007	March 14, 1980
(IN82-2070)	

Special Notice

Inasmuch as Friday December 24 and 31, 1982 falls on Federal holidays, the Davis-Bacon wage determinations will be published the next work days, i.e., Monday, December 27, 1982, and Monday, January 3, 1983, respectively.

Signed at Washington, D.C., this 23th day of December 1982.

Dorothy P. Come,

Assistant Administrator Wage and Hour Division.

BILLING CODE 4510-27-M

MODIFICATIONS P. 4

DECISION NO. CAS2-5172 - Mod. #2
 (47 FR 39075 - September 3, 1982)
 San Diego County, California

Change:	Basic Hourly Rates	Primo Benefits	Basic Hourly Rates	Primo Benefits	
Asbestos Workers	\$21.29	\$3.83	Power Equipment Operators Group 1	18.10	6.41
Boilermakers	20.01	3.59	Group 2	17.52	6.41
Carpenters	18.61	3.23	Group 3	16.97	6.41
Piledriver	18.86	3.23	Group 4	16.43	6.41
Millwrights; Pneumatic			Group 5	17.29	6.41
Nailers; Hardwood			Group 6	17.58	6.41
Floorslayers	19.21	3.23	Group 7	17.71	6.41
Divers:			Group 8		
Divers	42.22	3.23	Group 9		
Stand-by Divers	21.11	3.23	Dredging: (Hydraulic Section Dredge):		
Tender	20.11	3.23	Leverman		
Electricians:			Watch Engineer; Welders and Deckmate		
Technicians:			Winchman (Stem Winch or Dredge)		
Technicians	21.22	3.61+	Bargehand; Deckhand:		
Cable Splicers	21.77	3.61+	Fireman; Oiler:		
Utility Technician	16.00	3+	Leverhand		
Soft Floor Layers	17.80	3.59	Clamshell Dredges:		
Tile, Marble, and			Leverman		
Terrazzo Settlers	38.90	2.95	Deckmate		
Tile, Marble, and			Watch Engineers and		
Terrazzo Finishers	14.14	3.30	Deckmate		
			Bargehand; Deckhand:		
			Fireman; Oiler		
			ADD:		
			Sound Installers	14.47	1.46+
					38

MODIFICATIONS P. 3

DECISION NO. CAS2-5118 (Cont'd)

Power Equipment Operators:	Basic Hourly Rates	Primo Benefits	Basic Hourly Rates	Primo Benefits
Group 1	\$16.25	\$6.41		
Group 2	16.53	6.41		
Group 3	16.82	6.41		
Group 4	16.96	6.41		
Group 5	17.18	6.41		
Group 6	17.39	6.41		
Group 7	17.41	6.41		
Group 8	17.58	6.41		
Group 9	17.71	6.41		

MODIFICATIONS P. 6

DECISION NO. IN80-2082 - Mod. #1	Basic Hourly Rates	Fringe Benefits	Basic Hourly Rates	Fringe Benefits
<p>Sheet Metal Workers: Elkhart, Kosciusko & Marshall Cos. Sprinkler Fitters</p> <p>Change: Carpenters Elkhart County Zone II</p>	15.76 16.57	2.21 2.83	\$13.36	2.15
<p>DECISION NO. IN80-2015 - Mod. #3</p> <p>Asbestos Workers: Elkhart, Jasper, Kosciusko, Marshall, & Stark Cos. Bricklayers & Stonemasons Elkhart, Kosciusko & LaGrange Cos. Carpenters; Millwrights; Piledriversmen & Soft Floor Layers: Elkhart Co.; Carpenters Millwrights/Pile-driversmen Cement Masons Elkhart, Kosciusko, & LaGrange Cos. Electricians: Elkhart, Kosciusko & Marshall Cos. Ironworkers: Elkhart, Kosciusko (W. Portion exclu. Marston) LaGrange, (W 1/2 exclu. City of LaGrange, Marshall, Pulaski, & Starke Cos. Laborers:- Semi-Skilled Skilled Painters: Elkhart, Kosciusko, Marshall, Pulaski, & Starke Cos. Plumbers: Elkhart, Kosciusko & LaGrange Roofers: Elkhart, Kosciusko, Marshall, Pulaski & Starke Cos.; Composition; Damp & Waterproof Glaze</p>	\$16.56 15.77 14.30 14.55 14.97 17.40	2.57 1.68 2.48 2.48 1.58 14.38		

MODIFICATIONS P. 5

DECISION NO. HI82-5123 - Mod. #2 (47 FR 43513 - October 1982) Statewide, Hawaii	Basic Hourly Rates	Fringe Benefits	DECISION 8AL82-1082 - Mod. #1 (47 FR 52316 - November 19, 1982) Madison County, Alabama	Basic Hourly Rates	Fringe Benefits
<p>Boilermakers Marble Setters Sheet Metal Workers Terrazzo Workers and Tile Setters: Terrazzo Base Grinder Terrazzo Floor Grinder and Finisher Terrazzo Workers and Tile Setters</p>	\$15.10 15.03 14.25 13.45 12.02 15.03	\$4.06 4.75 7.30 4.75 4.75 4.75	Cement masons	\$12.75	

MODIFICATIONS P. 8

MODIFICATIONS P. 7

DECISION NO. LA82-4021 -
MOD. #5
[47 FR 19877 - 5/7/82]
Bossier & Caddo Parls.,
Louisiana
CHANGE:
Painters - Painters,
tape & float, vinyl
& paperhangers
\$11.25 1.25
15.795 .45
16.01 .45
16.17 .45
13.07 1.70

DECISION NO. LA82-4022 -
MOD. #9
[47 FR 19877 - 5/7/82]
Calcasieu Par., Louisiana
CHANGE:
Painters - Group 1
Group 2
Group 3
Tile setters
10.11 3.10
4.90 1.15
12.18 1.94
11.50 .30
9.20 .30

DECISION NO. LA82-4053 -
MOD. #5 (CONT'D)
Power equipment ops.:
Zones 2, 3 & 4:
Group 1
Group 2
Group 3
Group 4
Group 5
Group 6
Roofers:
Zone 2:
Roofers
Preparers remove old
roofing, place, stock
or move material,
tools or equipment
for journeymen
Zone 3 - Roofers
Zone 4 - Roofers
Kettlemen
\$ 9.55 2.20
10.58 2.20
10.58 2.20
11.15 2.20
13.32 2.20
12.32 2.20
10.11 3.10
4.90 1.15
12.18 1.94
11.50 .30
9.20 .30

DECISION NO. LA82-4053 -
MOD. #5
[47 FR 50421 - 11/5/82]
Statewide Louisiana
CHANGE:
Asbestos workers:
Zone 3
Zone 4
Boilermakers
Carpenters:
Zone 7:
Carpenters & soft
floor layers
Millwrights
Pile-drivers
Glaziers - Zone 2
Leathers - Zone 6
Marble, tile & terrazzo
workers & finishers:
Zone 2 - Tile setters
Painters:
Zone 1 - Group 1
Group 2
Group 3
Group 4
Zone 6 - Painters, tape
& float, vinyl & paper-
hanger
Zone 7 - Group 1
Group 2
Group 3
Plasterers - Zone 2
14.80 2.32
14.28 1.36
16.60 2.415
13.35
14.10
13.85
12.25 .01
13.35
13.07 1.70
15.795 .45
16.01 .45
16.17 .45
17.73 .45
11.25 1.25
9.55
10.65
10.55
13.25 .01

DECISION NO. NY81-3651 -
MOD. #3
[46 FR 45525 - Sept. 11,
1981]
CLINTON COUNTY, NEW YORK
CHANGE:
ELECTRICIANS
Zone I - City of Platts-
burgh and 5 mile radius
Electricians
Cable Splicers
Zone II - From Zone I to
a 20 mile radius of
Plattsburgh
Electricians
Cable Splicers
Zone III - Beyond Zone II
Electricians
Cable Splicers
13.30 1.75+
13.60 1.75+
48+
13.50 1.75+
48+
13.80 1.75+
48+
13.70 1.75+
48+
14.00 1.75+
48+
14.18 2.54
14.29 2.54
14.34 2.54
14.50 2.54
14.68 2.54
15.18 2.54

Basic Hourly Rates	Fringe Benefits
11.25	1.25
15.795	.45
16.01	.45
16.17	.45
17.73	.45
11.25	1.25
9.55	
10.65	
10.55	
13.25	.01

Basic Hourly Rates	Fringe Benefits
9.55	2.20
10.58	2.20
10.58	2.20
11.15	2.20
13.32	2.20
12.32	2.20
10.11	3.10
4.90	1.15
12.18	1.94
11.50	.30
9.20	.30

Basic Hourly Rates	Fringe Benefits
416.05	53.70
16.43	3.70
16.95	3.70
14.18	2.54
14.29	2.54
14.34	2.54
14.50	2.54
14.68	2.54
15.18	2.54

Basic Hourly Rates	Fringe Benefits
13.30	1.75+
13.60	1.75+
13.50	1.75+
13.80	1.75+
13.70	1.75+
14.00	1.75+

MODIFICATIONS P. 9

DECISION NO. NYE2-3025-
MOD. 13
(4) FR 39079 - Sept. 3,
1982)
ORANGE COUNTY, NEW YORK

ADD:
ELECTRICIANS
Twp. of Otisville,
Middletown, Cochen,
Florida, Warwick, Fort
Jervis, Sparrow Bush,
Monroe, Harnan, South-
field, Tusendo Lake and
Tusendo
Remainder of County

DECISION NO. TX82-4016
MOD. 14
(4) FR 43525 - 10/1/82)
Jefferson & Orange Cos.,
Texas

CHANGE:
Carpenters-residential
const. of not more
than 2 units & con-
dominium townhouses
of not more than 10
units excluding all
appt. const. & multi-
tal purpases
Laborers - Group 1
Group 2
Group 3
Group 4

DECISION NO. TX82-4054 -
MOD. 14
(4) FR 50430 - 11/5/82)
Collin, Dallas, Denton,
Ellis, Grayson, Hood,
Hunt, Johnson, Kaufman,
Palo Pinto, Rockwall,
Tarrant & Wise Cos.,
Texas

CHANGE:
Bricklayer & stonemason:
Zone 1
Zone 2
Painters:
Zone 2 - Group 1
Group 2
Group 3
Group 4
Plumber & Pipefitter:
Zone 1

Basic Hourly Rates	Fringe Benefits
14.00	30%
14.90	1.97+
	10.55%

Basic Hourly Rates	Fringe Benefits
915.19	1.765
10.66	1.50
10.86	1.50
10.96	1.50
11.11	1.50
15.58	1.74
15.57	1.71
15.75	1.12
16.00	1.12
17.00	1.12
16.125	1.12
16.62	1.99

SUPERSEDES DECISION

STATE: Indiana
DECISION NO.: IN82-2070
Superseded Decision No. IN80-2007, dated March 14, 1980 in 45 FR 16817
DESCRIPTION OF WORK: Residential Construction Consisting of single family homes and apartments up to and including 4 stories.

COUNTY: Blackford & Delaware
DATE: Date of Publication

Basic Hourly Rates	Fringe Benefits
\$ 7.50	
10.00	
7.95	
9.00	
6.95	
8.00	
6.96	
7.50	
6.63	
5.78	
6.75	
7.00	
10.30	1.15

Basic Hourly Rates	Fringe Benefits
6.23	
9.00	
7.35	
10.00	
10.40	
10.00	
10.73	
10.00	

ROOFERS
SHEET METAL WORKERS
TRUCK DRIVERS
POWER EQUIPMENT OPERATORS
BACKHOE OPERATOR
FRONT END LOADER
BULLDOZER OPERATOR
GRADER OPERATOR
SCRAPER OPERATOR

AIR CONDITIONING MECHANIC
BRICKLAYERS
CARPENTERS
CEMENT MASONS
DRYWALL FINISHERS/TAPERS
DRYWALL HANGERS
ELECTRICIANS
HEATING MECHANICS
INSULATORS
LABORERS
PAINTERS
PLASTERERS
PLUMBERS

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.3 (a) (1) (ii)).

(FR Doc. 82-33208 Filed 12-30-82; 8:45 am)
BILLING CODE 4510-27-C

federal register

Monday
January 3, 1983

Part III

Environmental Protection Agency

Hazardous Waste Management System;
Standards Applicable to Generators of
Hazardous Waste; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 262

[SW FRI 1970-2]

Hazardous Waste Management System; Standards Applicable To Generators of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On February 26, May 19, and November 19, 1980, and January 11, 1982, the Environmental Protection Agency (EPA) published regulations pursuant to the Resource Conservation and Recovery Act (RCRA). Those regulations allow hazardous waste generators to accumulate hazardous waste on-site for 90 days without obtaining a permit or having interim status under RCRA, provided that they accumulate the waste in accordance with certain standards.

EPA has received comments from the regulated community indicating that industries which generate hazardous waste typically have numerous locations on-site where waste is initially generated and accumulated, often in small amounts, prior to consolidation at centralized accumulation areas. In response to concerns that the standards for 90-day accumulation are unnecessary and impractical to apply at these "satellite" areas, EPA is proposing to amend the generator standards to allow generators to accumulate as much as 55 gallons of hazardous waste (except for acutely hazardous waste as listed in 40 CFR 261.33(e) of the regulations) at each satellite area for any length of time without complying with the 90-day accumulation standards. Generators could accumulate wastes under this provision provided that: (1) The wastes are placed in containers which are in good condition, (2) the wastes are compatible with their containers, and (3) the containers are marked with the words "Hazardous Waste" or other words that identify their contents. Within 72 hours of accumulating over 55 gallons at a satellite area, the generator would be required to comply with all applicable requirements under RCRA for further management of any waste in excess of 55 gallons.

EPA believes that protection of human health and the environment will not be affected by this action. EPA also estimates that this action will result in a savings to the regulated community of approximately \$5,000,000 per year.

DATES: EPA will accept public comments on the proposed amendment until March 4, 1983.

ADDRESSES: Comments should be addressed to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460. Communications should identify the regulatory docket number "Section 262.34(c)."

The public docket for this proposed rule is located in Room S-269C, U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C., and is available for viewing from 9:00 am to 4:00 pm Monday through Friday excluding holidays.

FOR FURTHER INFORMATION CONTACT: Amy Mills, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 382-4755, or the RCRA Hotline at (800) 424-9346 or (202) 382-3000.

SUPPLEMENTARY INFORMATION:

I. Background

On February 26, 1980, May 19, 1980, and November 19, 1980, EPA promulgated regulations pursuant to the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6901, *et seq.* The regulations established a system to manage hazardous waste, and include standards for generators of hazardous waste. (40 CFR Part 262, 45 FR 12732, 45 FR 33142, and 47 FR 1251). In § 262.34(a) of the regulations, EPA stated that generators may accumulate hazardous waste on-site for up to 90 days without obtaining a storage permit, provided they accumulate the waste in accordance with certain standards. These standards include requirements for: the use of tanks and containers, personnel training, and the preparation of contingency plans. In establishing those standards, EPA had assumed that accumulation generally occurred at one or two discrete locations within an industrial facility, and that the § 262.34 requirements would apply to loading docks, storage buildings, sheds and other central areas where wastes are accumulated.

Members of the regulated community, however, have pointed out that within an industrial complex there may be dozens of paces where hazardous wastes are initially generated and collected during daily operations prior to consolidation at a loading dock or other central waste accumulation area. At present, the regulations make no distinction between the initial collection of hazardous waste at various points of

generation ("satellite" accumulation) and accumulation at a central area on-site where these wastes are consolidated for on-site management or transportation off-site. Therefore, the standards for 90-day accumulation apply to both.

In the preamble to the November 19, 1980, Federal Register notice amending § 262.34, the Agency raised the issue of whether a distinction should be drawn between satellite accumulation and central accumulation areas. 45 FR 76624. EPA expressed the view that the requirements of § 262.34(a) appear appropriate for all types of accumulation areas, but solicited comments on the subject.

Various groups responded and all asserted that there is indeed a practical distinction between satellite and central accumulation which should be recognized in the regulations. The commenters supported a reduction or deletion of regulatory requirements for initial accumulation of hazardous wastes at or near points of generation.

Some commenters expressed the opinion that regulation of hazardous waste in satellite areas is unnecessary because these waste quantities are small and pose a very low risk to human health and the environment. Some noted that hazardous waste in satellite areas is typically held in a bucket or other container for only several days or a week before being emptied; therefore, they contended that there is little risk of undetected corrosion or leakage. Commenters also pointed out that unlike central accumulation areas where the variety and quantity of wastes contribute to the likelihood of serious incidents and chain reactions (fires, explosions, etc.), satellite areas usually have only one type of waste and are not prone to accidents of serious magnitude.

Most of the industries that commented reported that their satellite areas are close to manufacturing process areas and are under close company supervision. They stated that personnel who work in these areas are trained and experienced with hazardous raw materials and wastes. One example given was that of degreasing solvents accumulated in closed containers in a machine shop prior to being transferred to a central accumulation point. The satellite area is properly ventilated and equipped with a sprinkler system, mainly because of the risks posed by the raw material solvents and their use. The personnel who work in this area are said to be trained and experienced with the handling of these solvents before and after use. The commenters concluded that the additional training

required under § 262.34(a), which requires compliance with § 265.16, is unnecessary and burdensome.

In addition, by applying the training requirements to personnel who work at satellite areas, some plant officials have to train very large numbers of employees and keep extensive records on each person. One commenter noted that at one manufacturing plant, the personnel training requirements apply to ten times as many employees as they would if the requirements applied only to central accumulation areas. In his opinion, this large difference in cost and paperwork is not justified.

Some commenters claimed that the requirement that the date upon which each period of accumulation begins be marked on each container is too stringent for wastes accumulated at satellite areas. They stated that it is unnecessarily burdensome to mark dates on buckets and other small containers in which these wastes are likely to be collected. Further, since these vessels are emptied frequently, they must be marked repeatedly with new accumulation dates. This aspect of the requirement was also thought to be burdensome.

One commenter wrote that requirements in § 262.34(a) which requires compliance with Part 265 Subpart D (Contingency Plans and Emergency Procedures) are too stringent for satellite areas. In his opinion, it is not necessary to prepare contingency plans and designate emergency coordinators for these small, scattered accumulation areas.

Several commenters remarked that Congress intended that RCRA not interfere in manufacturing processes. They stated that initial accumulation of hazardous waste at or near the points of generation are integral parts of the manufacturing process, and should therefore not be subject to regulation under RCRA. They also noted that most of the accumulation areas are indoor workplaces and are subject to regulation under OSHA. Regulation of satellite areas under RCRA appears to them to be duplicative and unwarranted.

In general, the commenters believed that applying the requirements of § 262.34(a) to activities at satellite accumulation areas add unnecessary paperwork and cost without improving protection of human health or the environment. They advocated an exemption for satellite areas from some or all of the requirements of § 262.34(a).

While the Agency does not agree with all of the arguments raised by the commenters, EPA does agree with the general conclusion that there is little need for extensive regulation of satellite

areas under RCRA. The Agency agrees that it should not apply most of the requirements of § 262.34(a), which were intended for more centralized, higher volume accumulation, to the smaller volumes of waste at satellite areas. Specifically, the Agency believes that wastes collected at or near points of generation in small quantities need not be subject to requirements for marking of dates on containers, contingency plans, personnel training, and most standards for the management of containers and tanks required by Part 265 Subparts I and J.

As previously stated, some commenters claimed that OSHA standards protect the safety and health of persons handling hazardous materials in the workplace, and therefore RCRA regulations are redundant. EPA has considered OSHA's standards and has concluded that EPA should retain some regulation for accumulation of hazardous waste in the workplace. First, current OSHA regulations concern the handling of various hazardous materials in the workplace, but OSHA does not specifically regulate hazardous waste as defined under RCRA. Also, OSHA's rules do not deal specifically with aspects of accumulation that affect human health and the environment immediately outside the workplace. For instance, OSHA does not regulate the condition of containers used for accumulation. EPA therefore believes it is within the Agency's purview to continue to regulate the accumulation of hazardous waste within industrial areas insofar as those regulations do not duplicate or interfere with ongoing practices.

In a proposed rule published in the March 19, 1982, *Federal Register* (47 FR 12119), OSHA proposed new safety regulations for manufacturing entities which produce hazardous chemicals. The rule, which would apply to most kinds of hazardous wastes accumulated by generators, would require labeling, material safety data sheets (MSDS) and training for employees of manufacturing industries who work around hazardous chemicals. When and if OSHA's proposal is promulgated in final form, EPA will ensure that any final rulemaking on the subject of hazardous waste accumulation is consistent with and will not duplicate OSHA's requirements.

II. Today's Proposed Rule

For the reasons expressed above, EPA is today proposing to amend § 262.34 by adding a paragraph (c) to provide that small quantity accumulation of hazardous waste at satellite areas be exempt from the requirements of

§ 262.34(a). Section 262.34(c) would allow for accumulation of as much as 55 gallons of hazardous waste (other than "acutely" hazardous wastes listed in § 262.33(e) of the regulations) at or near any point of generation for any amount of time if the generator complies with §§ 265.171 and 265.172 and marks the containers with the words "Hazardous Waste" or with another description of their contents (e.g., "waste organics" or "waste solvent"). Within 72 hours of accumulating over 55 gallons at any satellite area, the generator would be required to manage that waste in excess of 55 gallons on conformance with all applicable standards under RCRA, including the 90-day time limit and other requirements under § 262.34(a) for further on-site accumulation. During the 72-hour interim period, §§ 265.171 and 265.172 and the container marking requirement would continue to apply.

After considering several alternatives, EPA has selected 55 gallons as a quantity threshold for this provision. The regulated community has indicated that a 55-gallon threshold would accommodate the variety of satellite situations they encounter. At the same time, EPA believes this threshold will provide a reasonable limit to the amount of hazardous waste managed without the benefit of the more environmentally protective measures of § 262.34(a). Fifty-five gallons of waste fills approximately one standard size drum, which, to EPA's knowledge, is the largest commonly used container for such accumulation.

EPA had considered setting a limit of one container at each satellite location instead of setting a waste volume limit. That option was rejected because different industries use different sizes of containers for satellite accumulation, and the Agency believes it would be unreasonable to limit all generators to one container per area, regardless of container size. Further, the Agency believes that protection of health and the environment is more closely associated with the quantity of accumulation at each location than with the number of containers used to accumulate the waste.

EPA had also considered setting a limit at each satellite area of 200 kilograms (kg) or ten days of accumulation, whichever occurs first. Although 200 kg and 55 gallons of waste are approximately equivalent, the Agency selected the volume limit (gallons) because it believes that a volume limit would provide for greater equity under the regulations for generators with wastes of higher unit weight. With regard to the 10-day threshold, the Agency believes there is little to be

gained by applying a time limit to the accumulation of small quantities of wastes in satellite areas if they are containerized and marked properly. For these reasons, EPA has decided not to propose either a weight limit or a time limit for satellite accumulation. However, the Agency requests comments on this determination and on whether a threshold other than 55 gallons should be used in this provision.

The 55-gallon threshold applies to each satellite area where hazardous wastes are accumulated. One manufacturing plant, therefore, may have several satellite areas on-site where as much as 55 gallons may be accumulated in conformance with § 262.34(c).

When over 55 gallons of hazardous waste has been accumulated at any point of generation, the generator would have 72 hours in which to comply with other hazardous waste management standards, such as § 262.34(a), for that amount of waste in excess of 55 gallons. The 72-hour period is intended to provide generators with adequate lead time to remove the excess wastes from the satellite area and to comply with the appropriate standards for subsequent management of the wastes. However, the same hazardous waste management standards that would apply during 55-gallon accumulation would continue to apply during the 72-hour period.

The proposed rule would require that waste in satellite areas be managed in accordance with §§ 265.171 and 265.172 of the interim status standards for storage. These standards are general, good-housekeeping measures which ensure that containers used for storage of hazardous wastes are in good condition, and are compatible with their contents. EPA believes that these are sensible requirements which should provide protection to human health and the environment.

EPA believes it is appropriate that the contents of containers used for satellite accumulation be identified clearly for safe handling and storage. The standards in § 262.34(a) require the containers used for 90-day accumulation be marked with the words "hazardous waste". EPA believes that the same standard should apply to satellite accumulation, but recognizes that in many satellite areas these containers are already routinely labelled with more explicit information about the materials they contain. Either a marking of "hazardous waste" or another marking identifying the contents of the container would probably serve the purpose of informing persons in the area of the hazardous nature of the material. EPA is therefore proposing to allow either type

of marking during the satellite accumulation period.

The proposed rule does not provide for the satellite accumulation of acutely hazardous wastes, (wastes comprised of those commercial chemical products and chemical intermediates listed in § 261.33(e), their off-specification species, containers and inner liners containing these materials, and spill residue and debris created by spills of these materials). The Agency identified those wastes as being particularly hazardous, and believes that all generators should use extra precautions wherever they handle acutely hazardous wastes, including at satellite accumulation areas. For this reason, today's proposal to exempt satellite accumulation of hazardous waste from many regulatory requirements does not include acutely hazardous waste. Acutely hazardous waste would therefore continue to be subject to § 262.34(a) at both central and satellite accumulation areas. The Agency welcomes comments on this determination.

III. Laboratory Wastes

Today's proposed exemption for satellite accumulation of hazardous wastes could be applied to laboratories where waste chemicals are initially generated and collected in small containers. Laboratory chemicals which have served their intended purpose, including discarded samples and spent solvents, are often collected initially in small containers such as 5-gallon cans or jars. When a number of these containers are aggregated, they are commonly placed in "lab packs" (as discussed in the preamble to § 265.316, November 17, 1981) and sent off-site for disposal. Some laboratories cannot qualify for the small quantity generator exemption in 40 CFR § 261.5; therefore, under current regulations, these laboratories must comply with § 262.34(a) from the moment they begin accumulating hazardous waste. If today's proposed rule is promulgated in final form, the initial accumulation of as much as 55 gallons of hazardous waste at or near any point of generation in a laboratory will be governed by § 262.34(c) rather than § 262.34(a).

Some laboratories that handle hazardous waste have indicated to EPA that the RCRA regulations regarding accumulation have been impractical to implement in laboratories. Their main concern has been the problem of accumulating quantities of hazardous waste that can be practically transported off-site. Because laboratories commonly collect waste chemicals at slow rates, it often takes

longer than 90 days in which to accumulate enough waste to fill a shipment. EPA believes that today's proposed rule, together with the current provisions for accumulation by small quantity generators (§ 261.5), will alleviate most of the operational problems associated with accumulation of hazardous waste by laboratories. However, the Agency welcomes comments and suggestions on this matter.

IV. Maintenance of Vessels at Manufacturing Areas

Hazardous wastes are sometimes generated when product vessels in manufacturing plants are periodically cleaned out. This maintenance procedure may produce a number of drums of hazardous waste which, according to the current regulations, must be managed in accordance with § 262.34(a) as soon as accumulation begins. Some generators find this requirement unreasonable, explaining that these drums are commonly removed from the clean-out area within two or three days, and therefore the immediate need to comply with the regulatory requirements for 90-day accumulation poses an unreasonable burden. Under the amendment being proposed today, a generator would have 72 hours after the first 55 gallons are accumulated in which to comply with either § 262.34(a) for continued on-site accumulation, or other hazardous waste management standards, as appropriate. EPA believes that today's proposal would alleviate the problems that generators experience with complying with § 262.34(a) during maintenance of product vessels.

V. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. In addition, 5 U.S.C. 553 of the Administrative Procedure Act requires that substantive rules not become effective until at least 30 days after promulgation unless there is good cause for shortening the period. The purpose of these requirements is to allow persons affected by the rulemaking sufficient lead time to prepare to comply with major new regulatory requirements. However, for the amendment proposed today, the Agency believes that delaying the effective date for any period of time after promulgation would cause substantial and unnecessary disruption in the implementation of the regulations and would be contrary to the public interest. This amendment, if promulgated in final form, would relieve

hazardous waste generators of having to comply with a number of requirements with respect to the initial, small quantity accumulation of hazardous waste in containers within a generating area. The Agency believes that this is not the type of regulation revision that Congress had in mind when it provided a delay between the promulgation and the effective date of revisions to regulations. Consequently, the Agency plans to make this amendment effective immediately if and when it is promulgated in final form.

VI. Compliance With Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory Impact Analysis. This proposed regulation is not major because it will not result in an effect on the economy of \$100 million or more, nor will it result in an increase in costs or prices to industry. There would be no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Because this amendment is not a major regulation, no Regulatory Impact Analysis is being conducted.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

VII. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information collection request contained in a proposed or final rule. This proposed rule, if promulgated, will not impose any new information collection requirements on the regulated community. In fact, this rule would reduce the information collection requirements contained in the cleared OMB request #2000-0062.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis for all proposed rules to assess their impact on small entities. No regulatory analysis is required however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The economic impact of this regulation will be to reduce the costs of complying with EPA's hazardous waste management regulations for generators of hazardous waste, including those

which are small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b), that this proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 262

Hazardous materials, packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal water supply.

Dated: December 20, 1982.

Anne M. Gorsuch,
Administrator.

It is proposed that Title 40 of the Code of Federal Regulations Part 262 be amended as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for Part 262 reads as follows:

Authority: Secs. 1006, 2002, 3002, 3003, 3004, and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended. (RCRA), 42 U.S.C. 6905, 6912, 6922, 6923, 6924, 6925.

2. In § 262.34, paragraph (c) is added to read as follows:

§ 262.34 Accumulation time.

(c)(1) Except as provided by paragraph (c)(2) of this section, a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near any point of generation without a permit or interim status and without complying with paragraph (a) of this section provided he—

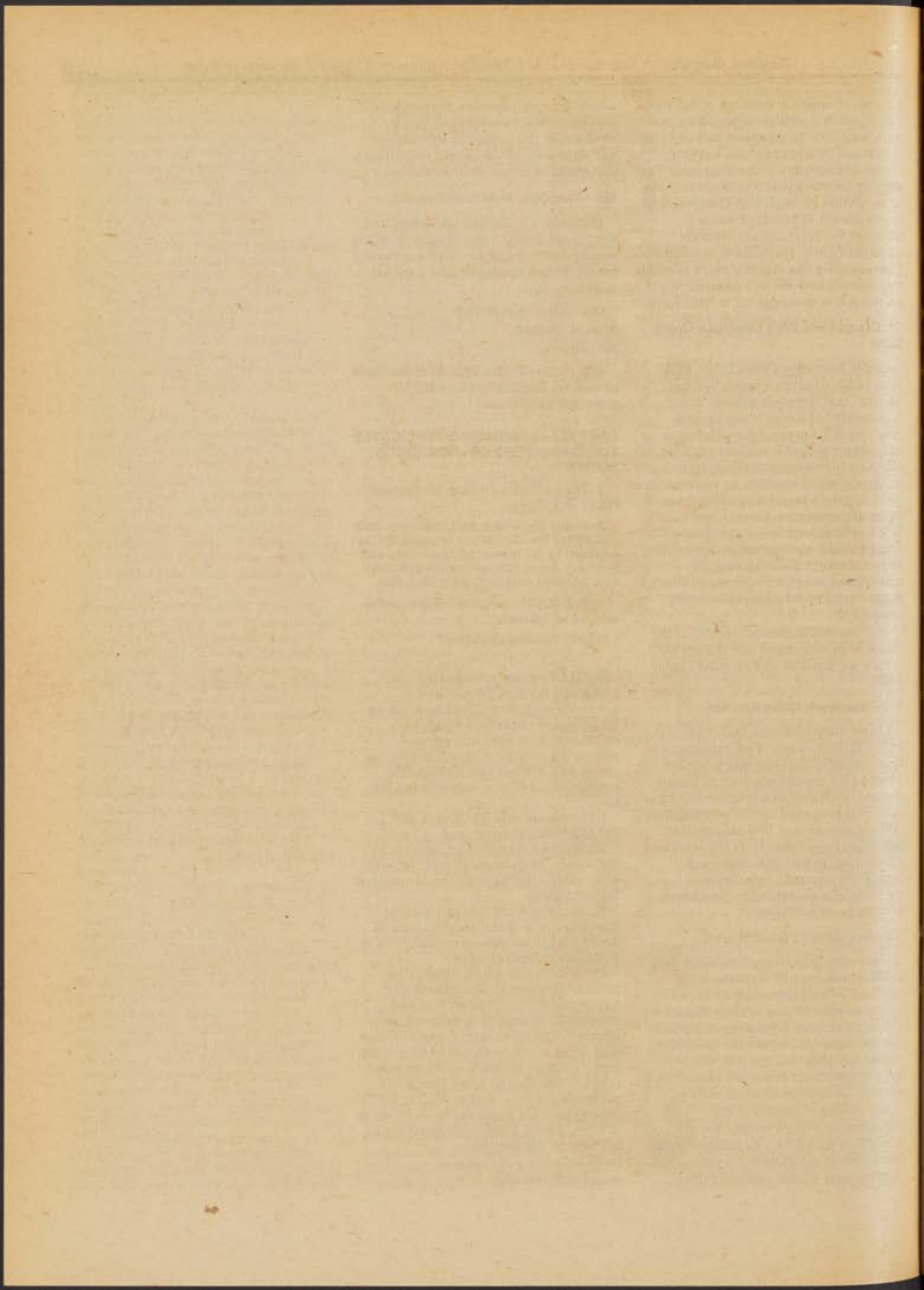
- (i) Complies with §§ 265.171 and 265.172 of this chapter; and
- (ii) Marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

(2) Paragraph (c)(1) of this section does not apply to the accumulation of acute hazardous wastes as identified in § 261.33(e) of this chapter.

(3) A generator who accumulates hazardous waste in accordance with paragraph (c)(1) of this section and exceeds 55 gallons at or near any point of generation must, with respect to that amount of waste in excess of 55 gallons, comply within 72 hours with paragraph (a) of this section or other applicable provisions of this chapter. During the 72-hour period, the generator must continue to comply with paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

[FR Doc. 82-35150 Filed 12-30-82; 8:45 am]

BILLING CODE 6560-50-M



federal register

Monday
January 3, 1983

Part IV

Environmental Protection Agency

**Polychlorinated Biphenyls (PCBs)
Manufacturing, Processing, Distribution in
Commerce and Use Prohibitions;
Amendment To Use Authorization for
PCB Railroad Transformers**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-62020A; TSH-FRL 2205-7]

Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Amendment To Use Authorization for PCB Railroad Transformers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On May 31, 1979, EPA promulgated a rule under section 6(e) of the Toxic Substances Control Act (TSCA) that authorizes the use of polychlorinated biphenyls (PCBs) in railroad transformers until July 1, 1984. Under this authorization, these transformers may not contain dielectric fluids with a PCB concentration exceeding 60,000 parts per million (ppm) (6 percent) after January 1, 1982, and exceeding 1,000 ppm (0.1 percent) after January 1, 1984. This rule amends the use authorization by: (1) Requiring these railroad organizations to meet the 60,000 ppm concentration level by July 1, 1984; (2) requiring these railroad organizations to meet the 1,000 ppm concentration level by July 1, 1986; and (3) authorizing the use of PCBs for the remaining useful life of these transformers at concentrations below 1,000 ppm. Finally, EPA is also amending the May 1979 rule to permit railroad organizations to service these transformers to reduce PCB concentrations and thereby to reduce the costs of disposal. The two primary reasons for these amendments are: (1) The majority of the affected railroad organizations did not select an adequate non-PCB substitute until October 1981, and (2) for certain organizations, necessary Federal funding for this activity was not received in time to perform the required servicing on PCB railroad transformers.

DATES: These amendments shall be considered promulgated for purposes of judicial review under section 19 of TSCA at 1:00 p.m. Eastern Daylight Time on January 17, 1983. These amendments shall be effective on February 2, 1983.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-509, 401 M St., SW., Washington, D.C. 20460; toll free: (800-424-9065); in Washington, D.C.: (554-1404); outside the USA: (Operator 202-554-1404).

SUPPLEMENTARY INFORMATION: EPA regulation at 40 CFR Part 761 have been recodified. Notice of the recodification appeared in the *Federal Register* of May 6, 1982 (47 FR 19527). As a result of this recodification, the revised section numbers will be used in this rule. Refer to the *Federal Register* Notice of May 6, 1982 to determine equivalent provisions under the former codification.

I. Background

On January 1, 1982, there were 756 railroad transformers in service that contained PCB dielectric fluid. Of this equipment, 730 transformers are used in self-propelled railroad cars and 26 transformers are used in locomotives. These PCB railroad transformers are operated in the northeastern United States by the National Railroad Passenger Corporation (Amtrak) and four State and metropolitan transit authorities.

Section 6 (e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.*, prohibit the manufacture, processing, distribution in commerce, and use of polychlorinated biphenyls (PCBs). In section 6(e) (2), there are two exceptions under which EPA may, by rule, allow a particular use of PCBs to continue. First, EPA may find that the use is in a "totally enclosed" manner. A "totally enclosed" manner is defined in section 6 (e) (2) (C) to be "any manner which will ensure that any exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant as determined by the Administrator by rule." Second, EPA may authorize PCBs to be used in a manner other than in a "totally enclosed manner" if the Agency finds that the use "will not present an unreasonable risk of injury to health or the environment."

A. Other PCB Regulations

EPA issued in the *Federal Register* of May 31, 1979 (44 FR 31514) final rules to modify the general ban on the manufacture, processing, distribution in commerce, and use of PCBs. The May 1979 rule, *inter alia*: (1) Excluded from regulation PCBs in concentrations less than 50 ppm; (2) defined all electrical capacitors, electromagnets, and non-railroad transformers as "totally enclosed," thus automatically exempting them from regulation under the Act; and (3) authorized 11 non-totally enclosed uses based on consideration of the health and environmental effects of PCBs, the exposure to PCBs resulting from these activities, the availability of substitutes for the PCBs, and the economic impact of restricting those uses. Included in the non-totally enclosed uses was an authorization to

use PCBs in railroad transformers until July 1, 1984, with certain use and servicing restrictions. This authorization provided that railroad transformers in active service may not contain dielectric fluid with a PCB concentration exceeding 60,000 ppm (6.0 percent on a dry weight basis) after January 1, 1982, may not contain greater than 1,000 ppm (0.1 percent on a dry weight basis) after January 1, 1984, and may not contain PCBs after July 1, 1984.

The Environmental Defense Fund (EDF) obtained judicial review of the provisions described above in the U.S. Court of Appeals for the District of Columbia Circuit. *Environment Defense Fund v. Environmental Protection Agency*, 638 F.2d 1267. As a result of the lawsuit, the court invalidated the 50 ppm regulatory exclusion and the EPA determination that the use of PCBs in electrical equipment was "totally enclosed" and remanded these issues to EPA for further action consistent with its opinion. The court upheld all PCB use authorizations including the use authorization for railroad transformers. Accordingly, this rulemaking is not affected by the PCB litigation.

Invalidation of the 50 ppm regulatory cutoff and the "totally enclosed" use finding would have made effective the general statutory ban on PCBs. This would have caused significant disruption in the electrical industry, which heavily depends on PCB equipment in current use, and in the chemical industry, which uses a large number of processes that inadvertently generate PCBs in very low concentrations. To avoid this disruption, parties to the lawsuit sought a stay of the court's mandate pending further rulemaking. As a result, the court entered orders for further actions by EPA and industry groups leading toward future rulemakings on PCBs. These court-ordered activities do not affect this final rule on the use of PCBs in railroad transformers. In response to the court order, EPA issued a proposed rule on the use of PCBs in electrical equipment which was published in the *Federal Register* of April 22, 1982 (47 FR 17426). The final rule for this use of PCBs was published in the *Federal Register* of August 25, 1982 (47 FR 37342). In addition, EPA issued a proposed rule excluding from regulation certain PCBs manufactured under conditions of very low risk, which was published in the *Federal Register* of June 8, 1982 (47 FR 24976). The final rule for this regulatory exclusion was published in the *Federal Register* of October 21, 1982 (47 FR 46980).

B. EPA Rulemaking Activities on the Use of PCBs in Railroad Transformers

Several railroad organizations had indicated to EPA that they could not comply with the deadlines affecting railroad transformers in the May 1979 rule. As a result, EPA proposed to extend the deadlines as published in the *Federal Register* of November 18, 1981 (46 FR 56626). The proposed deadline extension for the 60,000 parts per million (ppm) concentration level was based on a schedule submitted by the Southeastern Pennsylvania Transportation Authority (SEPTA) on February 5, 1981. Under that schedule, SEPTA estimated that the earliest that it could complete its servicing ("retrofill") program to meet the 6 percent PCB concentration level was October 1, 1983. (The term "retrofill" is used to denote the entire process of draining, flushing, and refilling a transformer with a non-PCB fluid.) This date was based on SEPTA's assumption that Federal funding for this retrofill activity would be received by October 1, 1981. SEPTA later requested an extension of the first two performance deadlines to July 1, 1984 and July 1, 1986, respectively. In addition, it requested an amendment to the second performance deadline to require a 20,000 ppm (2 percent) PCB concentration level. The November 1981 proposed amendment to the May 1979 rule also requested comment on the compliance deadline for achieving a 1,000 ppm concentration level.

Following a comment period for these proposed amendments, an informal hearing was held on January 5, 1982. Participants included SEPTA, other affected railroad organizations, representatives from transformer servicing firms, and manufacturers of substitute dielectric fluids. Reply comments were received through January 19, 1982. Many of the participants in the January 5, 1982 hearing contributed reply comments.

II. Specific Amendments to the Railroad Transformer Use Authorization

EPA considered three options in this rulemaking: (1) To maintain the deadlines in the May 1979 rule and thereby prohibit the use of PCBs in railroad transformers in violation of the January 1, 1982 deadline; (2) to rescind the deadlines in the May 1979 rule and to allow the use of PCBs in railroad transformers at their present concentration level; and (3) to extend the deadlines in the May 1979 rule. With respect to the third option, there were three additional considerations: (1) whether to change the PCB concentration levels mandated for the

respective deadlines; (2) whether to require a phased schedule for the lowering of the PCB concentration levels in railroad transformers and thereby to require six performance deadlines rather than two deadlines; and (3) whether to delete the expiration deadline of July 1, 1984 and thereby allow the use of PCBs for the remaining useful life of these transformers at a concentration level at or below 1,000 ppm. In this rule, EPA has chosen: (1) To extend the deadlines in the May 1979 rule; (2) to require a six-stage schedule of deadlines for lowering the PCB concentration levels in railroad transformers; and (3) to allow the use of PCBs at a concentration level at or below 1,000 ppm for the remaining useful lives of the railroad transformers. In addition, EPA is adding a provision to the servicing conditions of this use rule to allow for the reclassification of railroad transformers using PCBs.

A. Deadlines for Attaining PCB Concentration Levels

In this amendment to the May 1979 rule, two sets of three performance deadlines are established to meet the 60,000 ppm and 1,000 ppm PCB concentration levels, respectively. The three performance deadlines that these railroad organizations must achieve to meet the 60,000 ppm level are: (1) After July 1, 1983, the number of railroad transformers containing a PCB concentration greater than 60,000 ppm in use by any railroad organization may not exceed two-thirds of the total railroad transformers containing PCBs in use by that organization on January 1, 1982; (2) after January 1, 1984, the number of railroad transformers containing a PCB concentration greater than 60,000 ppm in use by any railroad organization may not exceed one-third of the total railroad transformers containing PCBs in use by that organization on January 1, 1982; and (3) after July 1, 1984, the use of railroad transformers that contain dielectric fluids with a PCB concentration level of greater than 60,000 ppm is prohibited. The environmental risks and economic impacts involved in these three performance deadlines for the 60,000 ppm concentration level are discussed in Unit IV.D.3. of this preamble.

The three performance deadlines for the 1,000 ppm concentration level follow a schedule that parallels that set for the 60,000 ppm level: (1) After July 1, 1985, the number of railroad transformers containing a PCB concentration greater than 1,000 ppm in use by any affected railroad organization may not exceed two-thirds of the total railroad transformers containing PCBs in use by that organization on July 1, 1984; (2) after January 1, 1986, the number of

railroad transformers containing a PCB concentration greater than 1,000 ppm in use by any affected railroad organization may not exceed one-third of the total railroad transformers containing PCBs in use by that organization on July 1, 1984; and (3) after July 1, 1986, use of railroad transformers that contain dielectric fluids with a PCB concentration greater than 1,000 ppm is prohibited. The environmental risks and economic impacts involved in these three performance deadlines for the 1,000 ppm concentration level are discussed in Unit IV.D.3. of this preamble.

As required by section 6(e)(2)(B) of TSCA, the Agency has balanced the public health and environmental risks of this use of PCBs with the benefits and economic impacts of this use. In addition, EPA has compared the risks and benefits involved in the proposed amendment with the comparable risks and benefits of the alternative regulatory options. This analysis is discussed, together with the Agency's unreasonable risk determination and findings in Unit IV of this preamble.

B. Provision for the Reclassification of Railroad Transformers Subject to This Use Rule

EPA has added a provision to the PCB rules to permit these railroad organizations to service PCB railroad transformers in order to change their classification and thereby reduce burdens associated with disposal. Thus, railroad transformers will be serviced in a manner consistent with other transformers under 40 CFR 761.30(a)(5). Section 761.30(a)(5) allows the conversion of a PCB Transformer to a PCB-Contaminated Transformer or a non-PCB Transformer by draining, refilling, and otherwise servicing the non-railroad transformer. In order to reclassify, the non-railroad transformer's dielectric fluid must contain less than 500 ppm PCB (for conversion to a PCB-Contaminated Transformer) or less than 50 ppm (for conversion to a non-PCB Transformer) after a minimum of three months of in-service use subsequent to the last servicing conducted for the purpose of reducing the PCB concentration in the transformer. Therefore, paragraph (b)(2)(vii) of § 761.30 has been added to this use rule to provide similar reclassification procedures for both railroad and non-railroad transformers. This amendment is intended to provide an additional incentive for railroad organizations to conduct the necessary retrofill operations to lower the PCB concentration levels in their railroad

transformers below 1,000 ppm. These organizations can realize cost savings through lower disposal costs for PCB-Contaminated and non-PCB Transformers under EPA regulations at 40 CFR 761.60. By providing further incentive for railroad organizations to lower PCB concentrations in these transformers below 1,000 ppm, this provision will also aid in ensuring that unreasonable risks are not presented by the promulgation of this rule.

C. Date of Promulgation for This Rule

In order to avoid a "race to the courthouse" by persons seeking judicial review of this rule, EPA has decided to designate the time and date of promulgation of this rule as 1:00 p.m. Eastern Daylight Time on January 17, 1983. The Agency has previously taken this approach for rules promulgated under the Clean Water Act (see 40 CFR 100.01, 45 FR 26048). The Agency will be considering a general rule for TSCA similar to 40 CFR 100.01.

The remainder of this preamble includes three primary units. Unit III of the preamble presents a review of significant information submitted by the railroad organizations during this rulemaking activity. Unit IV includes a discussion of the specific factors considered in the unreasonable risk determination with respect to these changes in the use rule. Finally, in Unit V, the Agency will respond to other proposed amendments presented by railroad organizations in this rulemaking.

III. Information Submitted by the Railroad Organizations on Technical Problems of Refilling PCB Railroad Transformers

During this rulemaking activity, the affected railroad organizations contributed information directly related to EPA concerns in promulgating the May 1979 rule. The following categories of information have been relied on by the Agency in the development of this rule.

A. Compliance Problems With the May 1979 Rule

The affected railroad organizations contributed significant information with respect to specific performance deadline requirements. These organizations provided two primary reasons for their failure to comply with the performance deadlines in the May 1979 rule: (1) The majority of these railroad organizations did not select an adequate non-PCB substitute until October 15, 1981, and (2) for certain organizations, necessary Federal funding for this activity was not received in time to perform the required

retrofills on transformers. The factors in the respective choices of substitute dielectric fluids are discussed in Unit IV.C. of this preamble. The issue of Federal funding for this activity is of particular importance for one of these organizations, the Southeastern Pennsylvania Transportation Authority (SEPTA). Of these organizations, SEPTA owns the largest number of PCB railroad transformers. As a result of the limited amount of non-Federal funds for its maintenance projects, SEPTA depends significantly on funding from the Urban Mass Transit Administration (UMTA) of the U.S. Department of Transportation. SEPTA's delay in receiving necessary UMTA funds was due to several factors: (1) Its failure to receive the necessary matching funds from the Commonwealth of Pennsylvania and its constituent localities; (2) alterations in the UMTA procedure for funding applications for capital modification projects; and (3) the delay in the submission of the SEPTA application for the first phase of refilling which was not formally received by UMTA until April 8, 1982.

B. Restrictions in Conducting the Necessary Refills

In its consideration of specific compliance dates for the 60,000 ppm and 1,000 ppm concentration levels, EPA has relied on information from the railroad organizations with respect to the maximum amount of railroad transformers that can be serviced each week. SEPTA has stated that only four of its cars per week can be properly refilled by its servicing contractor. In addition, SEPTA commented that, if the New York Metropolitan Transportation Authority (New York MTA) and the New Jersey Transit Corporation (New Jersey Transit) are each planning to refill one transformer per week, in addition to SEPTA's four transformers per week, the General Electric service shop in Philadelphia, Pennsylvania would probably be at its limit of capacity. Hence, the most rapid refill schedule that can be conducted for the transformers in violation of the January 1, 1982 deadline of the May 1979 rule is 6 transformers per week. (This calculation disregards Amtrak which performs its own refilling operations.)

SEPTA and other railroad organizations have commented that certain factors limit their capacity to refill their railroad transformers. First, they believe that only "quality" refills will result in meeting the compliance deadlines. This process requires removal of the transformer, application of a proper refill process, and the subsequent reattachment of the

transformer to the respective vehicles. SEPTA has stated that if refilling is performed on a transformer attached to a self-propelled car, approximately 15 percent of the total dielectric fluid would still remain. As a result, any non-PCB substitute used to refill a transformer would become contaminated with the remaining PCB fluid. Hence, SEPTA has concluded that removal of the transformer from the car can decrease the amount of PCB fluid remaining in the transformer after draining. Second, with the exception of Amtrak, these railroad organizations rely on the General Electric service shop in Philadelphia, Pennsylvania as their sole contractor for these refilling operations. In particular, SEPTA believes that the General Electric shop is the only service facility that is capable of providing the required refill services with the removal of the transformers from the respective cars. Third, the "drop tables" at each of the railroad organization's facilities used to remove the transformers from the cars cannot be used exclusively for refilling, because these facilities are also required for routine maintenance and repairs resulting from collisions or other non-routine maintenance damage. At least 10 percent of each of these railroad organization's cars are out of service for routine inspection and maintenance.

The maximum refill schedule might be accelerated by the entry of additional service contractors with the capacity to perform refills with the removal of the transformer from the car. Comments from Westinghouse Electric Corporation and Energy Optimization Incorporated (EOI) indicated that other refill servicing firms might be able to provide the required refill services in the near future. Amtrak has also provided information that it could perform these refill services for other railroad organizations. Despite the possible entry of these firms to provide refilling services for these railroad organizations, a large number of railroad cars or locomotives to be refilled cannot be removed from service within any single period.

According to SEPTA and the other railroad organizations, the aforementioned constraints on their compliance with the respective PCB concentration levels require that they proceed on a phased, uniform refilling schedule. Any clustering of refilling operations resulting in the removal of a

large number of self-propelled cars from commuter service is not possible.

C. Necessary Retrofill Operations To Achieve Compliance With the 1,000 PPM PCB Concentration Level

In their comments, all of the railroad organizations agreed that the 60,000 ppm PCB concentration level could be achieved in one retrofill. Prior to recent results from a SEPTA demonstration project, however, there was concern whether the 1,000 ppm concentration level could be met in two retrofills. A demonstration project by SEPTA on a PCB railroad transformer in operation since June 1979 has contributed important information following the first and second retrofills of this transformer with a non-PCB dielectric fluid (IRA-LEC T1). After one retrofill, in February 1980, the PCB concentration level was measured at 15,600 ppm (1.56 percent PCB concentration level). Following a second retrofill, the transformer was measured in August 1981 as containing a PCB concentration level of 137 ppm. Later measurements in November 1981 and February 1982 showed levels of approximately 480 ppm and 489 ppm, respectively.

Comments have also been received that in addition to traditional technologies that use liquid solvents as a flushing medium, there exists an alternative method for the railroad organizations to meet the 1,000 ppm concentration level requirement. This alternative retrofill method uses an electrical grade non-PCB flushing fluid which is chemically equivalent to standard freon refrigerants. This method transforms the fluid into a gas for penetration of the transformer interior. (The freon product used in this method is commercially known as "freon 113.") According to the developer of this method, the process depends on a combination of liquid sprays, rinses, and soaks, interspersed with freon gas bombardment of the transformer interiors. The process will require approximately five days per railroad transformer. This method can be applied with the transformer in place under the railroad car.

The developer of this system conducted a demonstration on a 750 KVA network transformer containing 270 gallons of PCB dielectric fluid. The trend in the leaching rate for PCBs into transformer fluid used in this demonstration indicates that after 53 days of operation, the PCB concentration has leveled off and remained under 500 ppm.

IV. Specific Factors Considered in This Unreasonable Risk Determination Concerning PCB Railroad Transformers

To authorize any use of PCBs under section 6(e)(2)(B) of TSCA, EPA must find that the activity will not present an unreasonable risk of injury to human health or the environment. This determination involves balancing the probability that harm will occur from the use of PCBs and the magnitude and severity of that harm against the benefits to society that would result from the proposed regulatory action. In determining whether an unreasonable risk is present, EPA has considered the following factors:

1. The effects of PCBs on human health and the environment, including the magnitude of PCB exposure.
2. The benefits of PCBs in railroad transformers.
3. The adequacy of the available substitute dielectric fluids.
4. The reasonably ascertainable economic impact of the rule after the consideration of impacts on the national economy, small business, technological innovation, the environment, and public health.

These factors are listed in section 6(c) of TSCA and are applicable to determinations concerning whether a chemical presents an unreasonable risk under section 6(a) and 6(e) of TSCA.

This unit will discuss these key factors in the unreasonable risk determination for this use rule. Finally, it will present specific findings for the determination that this use of PCBs does not present an unreasonable risk.

A. Human Health and Environmental Risks

In determining whether this amendment to the May 1979 rule is warranted, EPA considered information concerning the effects of PCBs on human health and the environment. The effects of PCBs were described in various documents which were part of the rulemaking record for the May 1979 rule. EPA evaluated this information, new information submitted to the Agency, as well as other recent literature on the effects of PCBs. The results are presented in the document "Response to Comments on Health Effects of PCBs." This document is included in the rulemaking record. Copies of this document are available through the Industry Assistance Office (see the "FOR FURTHER INFORMATION CONTACT" paragraph).

1. *Health effects.* In sum, EPA has determined that while PCBs have not been found to be uniquely toxic, they are toxic and persistent.

Chloracne occurs in humans exposed to PCBs. Although the effects of chloracne are reversible, EPA does not consider it insignificant. Chloracne is painful, disfiguring, and may require a long period of time before symptomatology disappears. Other areas of major concern have been identified by EPA. EPA finds that reproductive effects, developmental toxicity, and oncogenicity are areas of concern and may produce effects in humans exposed to PCBs.

Available data show that some PCBs have the ability to alter reproductive processes in mammalian species, sometimes even at doses that do not cause other signs of toxicity. Animal data and limited available human data indicate that prenatal exposure to PCBs can result in various degrees of developmentally toxic effects. Postnatal effects have also been demonstrated on immature animals following exposure prenatally and via breast milk.

Available animal studies indicate an oncogenic potential (the degree of which would be dependent on exposure). Available epidemiological data are not adequate to confirm or negate oncogenic potential in humans at this time. Further epidemiological research is needed in order to correlate human and animal data, but EPA does not find any evidence to suggest that the animal data would not be predictive of human potential.

EPA agrees that little or no mutagenic activity from PCBs is indicated from available data. It is EPA's opinion that more information is needed to draw a final conclusion on the possibility of mutagenic effects from PCBs.

EPA does not attribute all the effects observed with PCBs to be due to toxic impurities. Relatively pure PCB congeners have been shown to produce toxicity equivalent to that found when testing commercial PCB mixtures containing higher levels of impurities.

EPA also does not assume that all PCBs are equivalent toxicologically. It cannot be assumed that if one PCB congener is positive or negative for a specific health effect, then all PCB congeners are also positive or negative for that specific health effect. Research is just beginning in this area; many more studies need to be conducted on specific congeners before conclusions can be reached on an isomer or congener specific basis. Until such time, however, based on long-standing EPA policy, the Agency has determined that under section 6(e) all PCB congeners will be regulated uniformly.

2. *Environmental effects.* PCBs have been shown to affect the productivity of

phytoplankton and the composition of phytoplankton communities. Deleterious effects on environmentally important freshwater invertebrates from PCBs have been demonstrated. PCBs have also been shown to impair reproductive success in birds and mammals.

It has been demonstrated that PCBs are toxic to fish at very low exposure levels. The survival rate and the reproductive success of fish can be adversely affected in the presence of PCBs. Various sublethal physiological effects attributed to PCBs have been recorded in the literature. Abnormalities in bone development and reproductive organs have also been demonstrated.

EPA concludes that PCBs can be concentrated and transferred in freshwater and marine organisms. Transfer up the food chain from phytoplankton to invertebrates, fish, and mammals can result ultimately in human exposure through consumption of PCB-containing food sources.

3. *Risks.* Toxicity and exposure are the two basic components of risk. As indicated above, EPA concludes that in addition to chloracne, there is the potential for reproductive effects and developmental toxicity as well as oncogenic effects in humans based on animal data. EPA also concludes that PCBs do present a hazard to the environment.

Minimizing exposure to PCBs should minimize any potential risk. The requirements in this amendment to the May 1979 rule will result in the reduction of exposure relative to present exposure levels from railroad transformer use. EPA's analysis of regulatory options in section D. of this unit includes examining the effectiveness of each option in reducing exposure, thereby reducing the associated risk.

Human health and environmental risks involved in this use authorization relate to several categories of activity. Through normal operation of railroad cars, certain concentrations of PCBs in dielectric fluid are frequently spilled onto railroad beds. These spills can occur as a result of overheating or electrical failure in the transformers and of damage to these transformers from rocks and debris on the railroad bed. The transformers on self-propelled railroad cars are hung beneath their mainframes, and they are consequently vulnerable to puncture and other damage when the trains strike debris on the tracks. These activities result in risks to human health and the environment. As noted in the preamble to the proposed PCB ban rule published in the *Federal Register* of June 7, 1978 (43 FR 24808), PCBs in railroad transformers

are released during servicing and volatilized during overheating in operation. The design of these transformers, to fit within confined spaces on locomotives and self-propelled cars, has compounded the overheating problem.

There are two categories of persons that could be exposed to PCBs by the continuation of this use authorization: (1) Workers in service shops and railroad lines, and (2) persons exposed to PCBs leaked or spilled on railroad lines. PCB exposure from servicing operations is largely confined to workers in service shops. EPA believes that current service practices will result in minimal human exposure to PCBs. According to comments submitted in this rulemaking proceeding by various railroad organizations, adequate workplace controls to reduce risks from exposure to PCBs are provided by the marking and disposal requirements in 40 CFR Part 761, together with procedures for the handling and disposal of PCBs used by the Consolidated Rail Corporation (Conrail). Conrail is a railroad organization created by Congress in the Regional Rail Reorganization Act of 1973, 45 U.S.C. 741, which provides maintenance and other operational services to the railroad organizations subject to this rule except for Amtrak. Amtrak has developed its own procedures for the handling and disposal of PCBs. The railroad organizations have stated that when Conrail ceases to provide operational service after January 1, 1983, Conrail's servicing procedures will be continued by servicing contractor(s). It is also anticipated that at least a portion of the present servicing obligations of Conrail will be replaced by the recently incorporated Commuter Services Corporation which was created by Congress in 1981 to replace Conrail's maintenance and other operational services. Included in these procedures are guidelines concerning: (1) Protective clothing to minimize exposure during retrofills and normal shop maintenance functions; (2) workplace procedures for conducting retrofills; (3) precautionary measures, including cleanup procedures, to prevent skin contact with or ingestion of PCBs; (4) floor and curbing specifications; (5) inspection of storage areas for leaks; and (6) handling and storage of PCBs in yard and shop areas. In addition to these general guidelines, there exist more detailed procedures that have been designed by railroad organizations for certain railroad work sites and retrofill/repair shops. These general and particular servicing practices, and strict compliance with EPA marking and disposal requirements

in 40 CFR Part 761 will significantly reduce any potential exposure to PCBs suffered by workers who service transformers.

Because leaks and moderate spills do not cause the immediate failure of railroad transformers, railroad transformer leaks and spills can spread PCBs over extensive distances along the railroad beds. Hence, persons can be exposed to PCBs leaked or spilled on these railroad lines. Westinghouse Electric Corporation has indicated that as much as 30 percent of the dielectric fluid of a railroad transformer can leak before the unit fails. SEPTA has commented that its self-propelled cars operate from one to twenty miles between stops. There are some express commuter cars in SEPTA's system that could run twenty miles without stopping. In Amtrak's experience, punctures frequently result in leaks of dielectric fluid along the right of way.

The magnitude of exposure to PCBs from railroad transformers relates to the amount and concentration of PCBs in dielectric fluid that are released from these transformers. The capacity of self-propelled cars and locomotives varies in the ranges of 130-220 gallons and 420-750 gallons of dielectric fluid, respectively. The magnitude of exposure to PCBs in these transformers resulting from leaks and spill events will vary by the concentration levels of PCBs in the dielectric fluid of these transformers and by the amounts of PCBs which are leaked or spilled. For example, at a 550,000 ppm PCB concentration level (a typical PCB concentration in a railroad transformer in violation of the May 1979 rule), the maximum leakage of PCBs and exposure to PCBs from a single spill event would be approximately 268 pounds. In contrast, at a concentration of 60,000 ppm, the maximum leakage of PCBs from a transformer would be lowered to 29 pounds. Further, at a concentration of 1,000 ppm, the maximum leakage of PCBs from a transformer would be lowered to about 0.5 pounds. (Under 40 CFR 761.3(m), "leaks" refer to instances in which any electrical equipment, including PCB railroad transformers, have any PCBs on any portion of their external surface(s). Hence, the Agency views "leaks" as any release of PCBs on any portion of the railroad transformer. "Spill events" refer to significant leaks of dielectric fluid that can be identified by the railroad organizations in their normal operational practices.)

EPA has extrapolated to determine the maximum PCB leakage from the operation of railroad transformers. Given the information received during

this rulemaking activity, EPA has determined that if no restrictions were required for railroad transformers, a maximum of approximately 231,000 pounds would be released over the remaining useful lives of the PCB railroad transformers in active service on January 1, 1982. This determination is based on the following assumptions: (1) 773,000 pounds of PCBs are present in railroad transformers in active service on January 1, 1982, and (2) a maximum of 30 percent of the total dielectric fluid in a railroad transformer can be released as leaks or spills before the transformers fail. This amount of PCBs potentially released in railroad beds or workplaces could cause a significant risk of injury to human health or the environment.

Data concerning recorded spill events experienced by certain railroad organizations support the finding that this use of PCBs presents a risk of injury to human health or the environment. The New York Metropolitan Transportation Authority (New York MTA) has submitted information that in 1980 and 1981, there were 11 recorded spills in the New York MTA/Connecticut Department of Transportation (ConnDOT) systems. SEPTA has submitted data that in 1981, there were 15 recorded spill events in its system, with 168 gallons of dielectric fluid (approximately 1,155 pounds of PCBs) discharged into the environment as a result of these events.

B. Benefits of PCB Use in Railroad Transformers

The benefits of PCB use in railroad transformers include: (1) The unique properties of PCBs as a dielectric fluid, and (2) the benefits derived from allowing their continued use in railroad transformers, i.e., avoidance of further retrofitting or replacement costs and of service interruptions.

Perhaps the most important attribute of PCBs as a dielectric fluid for railroad transformers is their nonflammability. Prior to the enactment of section 6(e) of TSCA in 1976, these railroad organizations had relied on PCBs as a liquid coolant and as an insulating medium in railroad transformers. PCBs have good heat transfer and dielectric properties.

At present, these railroad organizations do not have a sufficient number of locomotives and self-propelled cars equipped with non-PCB railroad transformers to enable them to retire those equipped with PCB transformers. Transformers in 756 electric railroad self-propelled cars and locomotives operated in the northeastern United States by Amtrak

and four State/metropolitan commuter transit authorities contain PCBs. The respective railroad organizations' reliance on PCB railroad transformers varies among the organizations. The respective levels of reliance on PCB railroad transformers include: (1) 53 percent for Amtrak's commuter service in the Northeast Corridor; (2) 86 percent for SEPTA's metropolitan Philadelphia commuter service; and (3) 100 percent for the New Haven, Connecticut to New York City line of New York MTA and ConnDOT. New Jersey Transit relies on its self-propelled cars and locomotives with PCB transformers for its South Amboy, New Jersey to New York City line. Removal of these transformers without adequate replacements would seriously disrupt necessary commuter rail service areas. In addition, these organizations do not have adequate funding to replace these transformers. Moreover, the acquisition of new transformers or entire new self-propelled cars by these organizations cannot be accomplished within the time frame of the 1979 use authorization.

The aforementioned problems of these railroad organizations are particularly significant as related to the number of PCB railroad transformers operating in these specific service areas. According to information submitted during this rulemaking, SEPTA owns 319 transformers in self-propelled cars. New York MTA and ConnDOT own 244 PCB transformers in self-propelled cars. New Jersey Transit owns 106 PCB transformers used in self-propelled cars and 11 PCB transformers in its locomotives. Amtrak owns 87 PCB transformers, with 61 transformers in self-propelled cars and 26 transformers in locomotives. The 61 transformers in self-propelled cars were in compliance with the January 1, 1982 deadline. The 26 transformers in locomotives are not in compliance with that deadline. In addition, Conrail and the Maryland Department of Transportation own PCB railroad transformers in inactive service.

Because of the reliance of these organizations on PCB railroad transformers to maintain commuter service, it is important that EPA provide performance deadlines that allow for the continuation of this use of PCBs with consideration for the minimization of risks to public health or the environment.

C. Adequacy of the Available Substitute Dielectric Fluids

At the time of promulgation of the May 31, 1979 rule, railroad organizations had been testing for potential substitute dielectric fluids. By that date, no PCB substitutes had performed satisfactorily

in tests in railroad transformers. When the performance deadlines in the May 1979 rule were promulgated, EPA had expected timely testing and selection of an adequate PCB substitute from these continuing tests. In this testing, several non-PCB dielectric fluids successfully used for retrofitting non-railroad transformers overheated or created pumping problems in railroad applications. The failure of these common PCB substitutes considerably delayed the process of selecting a suitable non-PCB dielectric fluid for PCB railroad transformers. In the preamble to the proposed amendment to this use rule, EPA stated that certain dielectric fluids appeared to be feasible PCB substitutes: IRA-LEC, FR-15, Midel 7131, and RTemp Blend (Rail Temp). Subsequent to the publication of the proposed amendment on November 18, 1981, Rail Temp (a trichlorobenzene product) has been canceled by its distributor. In its comments concerning this decision, the distributor of Rail Temp cited a 1979 report concerning certain public health and environmental risks that might result from the incineration of chlorobenzenes at high temperatures. Following a review of this report, the distributor chose to concentrate its marketing efforts on a synthetic ester substitute, Envirotemp 100. During this period, EPA has been informed of other substitute fluids that have been introduced to the market.

1. Information Concerning Non-PCB Dielectric Fluids. a. *IRA-LEC/FR-15.* IRA-LEC and FR-15 have been tested by SEPTA and other railroad organizations and have been found to be suitable dielectric fluids for PCB railroad transformers. Unlike substitute dielectric fluids with synthetic esters, IRA-LEC and FR-15 are non-flammable. According to SEPTA and other railroad organizations, these fluids possess good dielectric properties and thermal characteristics. IRA-LEC and FR-15 are mixtures of 1,2,3-trichlorobenzene; 1,2,4-trichlorobenzene; 1,2,3,4-tetrachlorobenzene; and other hydrocarbons.

Certain railroad organizations have expressed concern that the toxicity and persistence of the chlorinated benzenes contained in FR-15 and IRA-LEC may make them subject to future regulatory action. One of the trichlorobenzenes contained in these fluids, 1,2,4-trichlorobenzene, is listed as a "hazardous constituent" for EPA regulations, 40 CFR Part 261, under the Resource Conservation and Recovery Act, 42 U.S.C. 6902. Therefore, given this possibility of future Federal regulation, certain railroad organizations have been

reluctant to use these fluids for retrofilling. At this point, however, these fluids are suitable for meeting the performance deadlines in this use rule. EPA is in the process of negotiating an agreement with producers of certain isomers of chlorinated benzenes to conduct specific health effects tests of these isomers, including 1,2,4-trichlorobenzene contained in FR-15 and IRA-LEC. A notice describing the terms of this agreement will be published for public comment in the Federal Register prior to the commencement of these health effects tests. An evaluation of the results of these tests will determine whether any regulatory action is necessary under section 6 of TSCA to protect public health and the environment from exposure to trichlorobenzene.

b. *Midel 7131*. Midel 7131 is composed of pentaerythritol esters and is manufactured in the United Kingdom and the United States. According to SEPTA and other railroad organizations, Midel provides good dielectric strength and is non-toxic and biodegradable. However, certain railroad organizations have expressed concern about Midel's fire point of 310° C. which is close to the minimum standard of section 450-23 of the National Electrical Code of the National Fire Protection Association, i.e., 300° C. This standard has been accepted by these railroad organizations as their minimum standard for dielectric fluids in passenger applications.

According to Amtrak, Midel's fire point is sufficiently higher than the minimum standard of the National Electrical Code. In addition, Amtrak has cited the successful use of Midel as a substitute for PCB fluids in enclosed switches in the Dartford Tunnel, London. According to Amtrak's comment, this application of Midel demonstrates its high resistance to repeated arcing in the fluid as compared with the arcing which would be experienced, mainly under fault conditions, in a PCB railroad transformer.

Based on a review of tests of the flammability of Midel in railroad transformers as conducted by Factory Mutual Research Corporation, the Federal Railroad Administration has concluded that Midel is satisfactory as a non-PCB dielectric fluid for railroad transformer use.

c. *Other non-PCB dielectric fluids*. Envirotemp 100 is composed of pentaerythritol esters, and its dielectric properties and chemical composition are similar to Midel 7131. Like Midel, Envirotemp is biodegradable, non-bioaccumulating, and non-toxic.

Given comments received from a major supplier of synthetic-based lubricants for jet engines, another transformer fluid with a chemical composition and dielectric properties similar to Midel could be introduced in the near future.

2. *Technological feasibility of achieving the 1,000 ppm PCB concentration level*. As described in Unit III.C. of this preamble, the Agency has received information that confirms that these PCB railroad transformers can achieve the 1,000 ppm PCB concentration level in two retrofills. As a result of a demonstration project conducted by SEPTA on a PCB railroad transformer in operation since June 1979, there is substantial evidence that the PCB concentration level has been lowered to below 1,000 ppm after two retrofills using FR-15 or IRA-LEC. The last recorded reading of this demonstration, conducted eight months after the second retrofill, has shown that the leaching of PCBs from the transformer has not resulted in a PCB concentration level exceeding the 1,000 ppm level. As described in Unit III.C. of this preamble, the results of the SEPTA demonstration project indicate that the PCB concentration level in the transformer has leveled off and remained under 500 ppm. Although EPA believes that this demonstration confirms that the 1,000 ppm level is feasible as a mandated concentration level for the second set of performance deadlines, the results from this demonstration have not yet provided sufficient data to confirm the feasibility of a 500 ppm mandated concentration level.

D. Economic and Environmental Impacts of Regulatory Options

EPA considered three primary regulatory options in amending this use rule. These options were: (1) To maintain the deadlines in the May 1979 rule, (2) to rescind the performance deadlines of the May 1979 rule, and (3) to extend the deadlines in the May 1979 rule. This unit will consider the economic and environmental impacts of these regulatory options.

1. *Maintenance of the performance deadlines in the May 1979 use rule*. Without this amendment to the current performance deadlines, approximately 669 transformers would be in violation of the January 1, 1982 performance deadline. These transformers provide most of the daily commuter service to the metropolitan areas of the northeastern United States. If transformers were removed from service, there would be severe interruptions in daily commuter service

which could affect both users of the railroads and railroad workers, and would have secondary effects on related businesses. For example, small businesses serving metropolitan areas of the northeastern United States could suffer significant commercial losses resulting from a temporary cessation of public transit. This effect on small businesses would result from the dependency of businesses in these commercial areas on public transit operations conducted by these railroad organizations. These public transit operations provide necessary access for residents of the affected metropolitan areas to shop in commercial areas served by public rail transit.

Without an extension of the performance deadlines in the May 1979 rule, there would be increased vehicular traffic in the affected metropolitan areas resulting from reduced railroad commuter traffic. Congestion would be increased in these metropolitan areas, with increased air pollution and a higher risk of automobile accidents. If the current performance deadlines are not extended and these railroad organizations ceased commuter service, SEPTA has estimated that the following impacts would result in its service area: (1) Approximately 73,000 increased auto trips per day; (2) approximately 32,500,000 aggregate pounds per year in increased air pollution through emissions of carbon monoxide, hydrocarbons, and nitrogen oxide; and (3) an increase of approximately 61,000 gallons in daily regional gasoline consumption. Similar impacts could be expected for other affected metropolitan areas in the northeastern United States.

Existing service capacity for commuters could be maintained only by these organizations incurring significant costs to replace existing PCB railroad transformers. Given cost estimates provided by SEPTA and the other affected organizations, the total incremental replacement costs for these transformers would range from approximately \$28 million, assuming a useful life of 15 years for a transformer, to \$63 million assuming a useful life of 30 years for a transformer.

The advantages of maintaining the performance deadlines of the May 1979 rule include the prevention of PCB exposure to railroad workers and persons affected by PCB leaks and spills along the railroad lines, and the avoidance of cleanup costs that result from releases of PCBs during this use.

2. *Rescission of the performance deadlines in the May 1979 rule*. This option was proposed by certain railroad organizations, including SEPTA and

New York MTA, as an alternative to their proposed modification of the performance deadlines in the May 1979 rule. It was presented in conjunction with their argument that PCB railroad transformers should qualify as "totally enclosed" uses under section 6(e)(2)(C) of TSCA. (For a discussion of this issue, see Unit V.A. of this preamble.)

Under this option, 773,000 pounds of PCBs in railroad transformers would be used in active service for the remaining useful lives of these transformers. Westinghouse Electric Corporation estimated that a maximum of 30 percent of the total dielectric fluid in a railroad transformer might be released as leaks and spills before the transformer fails. Hence, a maximum of approximately 231,000 pounds of PCBs could be released into the environment under this alternative. Compared with the other options, this alternative would represent the greatest magnitude and risk of exposure from the use of PCBs in railroad transformers.

The advantage of this option is the avoidance of the cost of performing one or two retrofills for these transformers. The total costs of retrofilling these PCB railroad transformers to meet the 1,000 ppm concentration level ranges from \$8.3 to \$23 million. Under this option, however, small businesses that could provide retrofilling functions for these railroad organizations would lose the opportunity to perform these services. These cost estimates are described in greater detail in the Agency's economic analysis prepared for this rulemaking.

3. *Extension of the performance deadlines in the May 1979 rule.* As described in Unit II, in their comments for this rulemaking, the railroad organizations presented the following proposal for the extension of the performance deadlines in the May 1979 rule. In sum, they urged EPA to: (1) Order the reduction of PCB concentrations in railroad transformers to 60,000 ppm by July 1, 1984; (2) order the reduction of PCB concentrations in railroad transformers to 20,000 ppm by July 1, 1986; and (3) allow the use of PCBs for the remaining useful lives of these transformers below 20,000 ppm.

This amendment to the use rule differs from the proposed rule in the following requirements. First, the amendment establishes a set of three performance deadlines for these transformers to achieve a 60,000 ppm level. Under these deadlines, one-third of the transformers in active service by each railroad organization must reach this level by July 1, 1983; another third by January 1, 1984; and the final third by July 1, 1984. Second, the amendment establishes a set of three performance deadlines for

meeting the 1,000 ppm level. Under these deadlines, one-third of the transformers in active service by each railroad organization must reach this level by July 1, 1985; another third by January 1, 1986; and the final third by July 1, 1986. Finally, the amendment deletes an expiration deadline for this use of PCBs at or below 1,000 ppm, allowing this use of PCBs for the remaining useful lives of these transformers below 1,000 ppm. This unit will analyze the economic impacts and environmental risks of each of the principal requirements of this amendment to the May 1979 rule.

a. *Extension of the performance deadlines for the 60,000 and 1,000 ppm concentration levels.* In its joint petition of October 15, 1981, SEPTA together with New Jersey Transit, New York MTA, and ConnDOT has provided certain cost assumptions which the Agency has used to calculate the economic impact of this amendment. In addition, the Agency has applied other assumptions in calculating the total cost of retrofilling railroad transformers under the deadlines of this amendment. These costs were estimated based on present value calculations. (These present value calculations take into account the opportunity costs of expenditures that are deferred by railroad organizations and shifted into retrofilling operations required under this rule.) The total costs of retrofilling these PCB railroad transformers to meet the 1,000 ppm concentration level ranges from \$8.3 million to \$23 million. For SEPTA, the range is between \$3 million and \$9.65 million. The estimate ranges of costs for the other railroad organizations are: \$3 million to \$7.4 million for New York MTA/ConnDOT, \$938,000 to \$3.2 million for New Jersey Transit, and \$654,000 to \$2.4 million for Amtrak. According to the Agency's economic analysis, the average cost-effectiveness of this amendment, excluding clean-up cost savings, ranges from \$85 to \$1,205 per pound of PCBs saved from the environment. The assumptions and calculations supporting these estimates are presented in the economic analysis prepared for this rulemaking.

The developer of the freon retrofill method has commented that through application of its method, the 1,000 ppm PCB concentration level can be met in one retrofill. Under cost assumptions presented by Positive Technologies Inc. (PTI), the total cost for the railroad organizations to meet the 1,000 ppm PCB concentration level could range from approximately \$8.3 million, assuming a 15-year useful life for transformers, to \$9.7 million, assuring a 30-year useful life. At this time, the Agency cannot

confirm the accuracy of the cost assumptions presented by PTI.

The extension of these performance deadlines would also have economic implications for small businesses. This amendment to the use rule for PCB railroad transformers would avoid any adverse economic impact on small businesses. This amendment should provide incentives for the development of non-PCB substitute fluids and alternative retrofill technologies, a portion of which is provided by small businesses. In addition, this amendment will provide a stimulus for continued improvements in existing alternative retrofill methods including those retrofill methods provided by small businesses.

Compliance by railroad organizations under the performance deadlines of this amendment would remove most of the PCBs in the dielectric fluid of railroad transformers. On January 1, 1982, there were 773,000 pounds of PCBs in railroad transformers used in active service. Under the performance deadlines of this rule, by July 1, 1984, there should be 93,000 pounds of PCBs remaining in railroad transformers used in active service (60,000 ppm PCB concentration). Under the 1,000 ppm concentration requirement, by July 1, 1986, there would be only 1,550 pounds of PCBs remaining in railroad transformers used in active service. This will represent the maximum pounds of PCBs remaining in railroad transformers used in active service with the elimination of an expiration deadline under this rule. Therefore, with full compliance by railroad organizations, 99.8 percent of the PCBs present in the transformers on January 1, 1982 will be eliminated by this rule. This will greatly reduce the potential for contamination of the environment and exposure to humans from the continued use of railroad transformers.

The aforementioned estimates have been derived from data provided by several railroad organizations. A key assumption for these estimates was an average PCB concentration in railroad transformers, with the exception of transformers used in Amtrak self-propelled cars, of 550,000 ppm (55.0 percent on a dry weight basis). Amtrak was able to retrofill the 61 transformers in its self-propelled cars to meet the 60,000 ppm (6 percent) concentration level by January 1, 1982. Hence, for these estimates, the average PCB concentration in these transformers is at a 6 percent PCB level, rather than at a 55 percent PCB level. Amtrak did not, however, retrofill the 26 PCB railroad transformers in its locomotives by that date. The average PCB concentration in

these transformers is at a 55 percent concentration level.

The possible reliance by certain railroad organizations on the freon gas method to supplement the retrofitting of these transformers with a non-PCB substitute fluid will present no known risks to public health or the environment. Given information provided by the developer of this method, EPA has determined that as used in the retrofit of these transformers, an insignificant amount of this freon product will be released into the environment. After each retrofit of a transformer with this process, the freon gas is recycled and used for other retrofills. Given the minimal exposure risk presented by the use of the freon product in this retrofit process, no regulatory action by the Agency under section 6 of TSCA will be initiated.

b. *Performance deadlines for lowering PCB concentration levels in railroad transformers to 60,000 ppm and 1,000 ppm.* The Agency considered three options for the establishment of performance deadlines for lowering PCB concentration levels in railroad transformers to 1,000 ppm by July 1, 1986. These options were: (1) Requiring only a single performance deadline of July 1, 1986, for compliance with the 1,000 ppm concentration level; (2) requiring one performance deadline for compliance with the 60,000 ppm level (July 1, 1984) and one performance deadline for compliance with the 1,000 ppm level (July 1, 1986); and (3) requiring three performance deadlines for compliance with the 60,000 ppm level and three additional deadlines for compliance with the 1,000 ppm level. The Agency also considered requiring periodic reports of progress together with each of these options.

Under any of these approaches, with traditional retrofit technology, these organizations will conduct two retrofills of their railroad transformers to meet the 1,000 ppm PCB concentration level by July 1, 1986. The testing, inspection, and maintenance costs should be identical under any of these approaches.

EPA has determined that options with more performance deadlines ensure the reduction of risk to human health and the environment associated with this use of PCBs in a shorter period than options with fewer deadlines. Because there are significant differences in the risks involved with use of PCBs at different concentrations, the six-stage PCB reduction schedule has been promulgated in this amendment to hasten retrofit progress. Given the present concentration level in most PCB railroad transformers, there would be a maximum release of 268 pounds of PCBs

from a maximum spill of 39 gallons of dielectric fluid. With the 60,000 ppm level, there would be a maximum release of approximately 29 pounds of PCBs from a similar transformer. With the 1,000 ppm level, there would be a maximum release of approximately 0.5 pound of PCBs from a similar transformer. It is EPA's concern for the minimization of risks from a single spill event that makes a schedule with more performance deadlines more desirable. Requiring periodic reports of progress from these organizations would not contribute to the reduction of risks. Such a requirement would merely provide information, rather than risk-minimization.

EPA has determined that of the options considered, a schedule with six performance deadlines provides the greatest assurance that these railroad organizations will not fall behind in their retrofit schedule. This safeguard is important because, according to the comments provided by these organizations, each of them is limited as to the rate at which cars can be removed from service. Because of the limitation, it is necessary for the retrofitting to proceed at a steady rate. Options which theoretically would provide greater flexibility for the railroad organizations by specifying fewer interim deadlines are not desirable because such flexibility has no practical value. This conclusion is supported by the comments of the railroad organizations that the maximum rate of removal of cars from service cannot be exceeded. Therefore, to comply with the final deadline, railroad organizations must not fall behind schedule. Requiring compliance with interim deadlines provides incentive for these organizations to stay on schedule. Requiring periodic reports of progress from these organizations would not provide additional incentive for them to maintain their schedule, and would impose unnecessary costs.

Given these considerations, EPA has decided that a total of six performance deadlines should be required for compliance with the rule. Periodic progress reports will not be required. The six performance deadlines in this rule are easily achievable by any of the railroad organizations because the deadlines have been developed to follow the schedule proposed by them.

EPA has determined that no adverse economic impacts will result from the promulgation of a uniformly phased schedule of six performance deadlines as compared with the performance deadlines that would be established under any of the other options. Compared with these options, the

establishment of six performance deadlines will not impose any additional costs on the affected railroad organizations.

c. *Deletion of the expiration deadline for this use of PCBs at a concentration level below 1,000 ppm.* The use authorization for PCB railroad transformers in the May 1979 rule expires on July 1, 1984, six months after the performance deadline for the 1,000 ppm concentration level. This amendment will delete the expiration deadline for this use of PCBs below a concentration of 1,000 ppm.

This deletion of the expiration deadline will allow these railroad organizations to avoid the cost of at least an additional retrofit of their transformers to further reduce PCB concentrations below 1,000 ppm. EPA has estimated that the cost of a third retrofit for these transformers to further reduce PCB concentrations below 1,000 ppm would range from approximately \$6.7 million to \$9.1 million. Alternatively, the replacement costs for these transformers would range from approximately \$28 million to \$63 million. Finally, the Agency cannot determine that it is technologically possible to completely eliminate PCBs from railroad transformers through retrofitting operations, including the freon gas method.

After the last performance deadline of this rule, July 1, 1986, there will remain a maximum of approximately 1,550 pounds of PCBs in active service in these transformers. These transformers can lose at most 30 percent of their dielectric fluid before they fail. Hence, approximately 460 pounds of PCBs as a portion of the total dielectric fluid of these transformers could be released through leaks and spills on railroad beds before the transformers fail. Similarly, under the 1,000 ppm concentration level, the maximum leakage of PCBs from a railroad transformer for a single spill event will be approximately 0.5 pound of PCBs.

E. Findings on the Use of PCBs in Railroad Transformers

The Agency has concluded that the risks associated with extending the deadlines and allowing the use of PCBs for the useful remaining lives of railroad transformers at a concentration level at or below 1,000 ppm are outweighed by the benefits of continued operation of commuter rail service in the northeastern United States and the costs that are avoided by not requiring the reduction of the PCB concentration level below 1,000 ppm. Therefore, EPA finds that authorizing the use of PCBs in

railroad transformers with the performance deadlines specified in this rule does not present an unreasonable risk to health or the environment for the following reasons:

1. These performance deadlines should progressively reduce the human health and environmental risks involved in this use of PCBs. By July 1, 1986, PCB concentration levels in dielectric fluid in railroad transformers will be at or below 1,000 ppm. At this concentration level, a minimal amount of PCBs (approximately 1,550 pounds) will remain in railroad transformers. This amount constitutes 0.2 percent of the amount of PCBs used in railroad transformers in active service on January 1, 1982. Under this schedule, the risks involved in a release of PCBs from these transformers will decrease from a maximum release of 266 pounds of PCBs from a single spill event under present concentration levels to a maximum release of 0.5 pound of PCBs under the 1,000 ppm concentration level. Further reductions in risk should occur as a result of servicing provisions permitting transformer reclassifications. Railroad organizations will have the incentive to reduce PCB concentrations in transformers below 500 ppm, if feasible, in order to reduce their disposal burdens.

2. The risks from continued use of PCBs in railroad transformers would be low, given the amount and concentrations of PCBs remaining after July 1, 1986, existing railroad workplace controls, and EPA disposal requirements in 40 CFR Part 761.

3. The estimated costs for the necessary retrofill operations under this amendment will range between \$8.3 million and \$23 million.

4. The costs to these railroad organizations associated with retrofilling under these performance deadlines are not excessive compared to the amount of PCBs that are removed from potential release into the environment.

5. Compared with the alternative of two final compliance dates for the 60,000 ppm and 1,000 ppm PCB concentration levels, the establishment of six performance deadlines will not impose any additional costs for testing, inspection, and maintenance of these transformers under requirements in 40 CFR Part 761.

6. The continued use of PCBs in railroad transformers under the performance deadlines of this rule would avoid a disruption of necessary commuter rail service in the northeastern United States.

7. The continued use of PCBs in railroad transformers under the performance deadlines of this rule

would avoid increased vehicular traffic in affected metropolitan areas with related congestion and air pollution.

8. There exist adequate non-PCB dielectric fluids for use in railroad transformers to lower the PCB concentration level in railroad transformers below 1,000 ppm. In addition, there is evidence that railroad organizations might be able to lower PCB concentration levels to below 500 ppm. These organizations are encouraged to reach this level in order to reduce their disposal burdens.

9. The elimination of PCBs from these railroad transformers might not be technologically feasible through retrofill operations. Hypothetically, assuming that additional retrofills could eliminate all PCB fluid from these transformers, the costs of such retrofills (at least \$6.7 million to \$9.1 million) would be excessive. It would cost approximately as much to eliminate the last 0.2 percent of the PCB fluid as the first 99.8 percent. In addition, the cost of replacement for these transformers (between \$28 million and \$63 million) would be an unreasonable burden considering the small amount of PCBs (a maximum of 1,550 pounds) that would be eliminated. Under the 1,000 ppm concentration level, the maximum release of PCBs from these transformers for a single spill event would be only 0.5 pound of PCBs.

V. Other Proposed Amendments Presented by Railroad Organizations in This Rulemaking

Through the comment periods and informal hearing related to the proposed amendments to this use rule as published in the *Federal Register* of November 18, 1981, the affected railroad organizations presented several regulatory options not adopted in this final use rule. This section presents summaries of these proposed amendments as presented by the affected railroad organizations and EPA determinations on the validity of these proposed options.

A. Issue Concerning Whether PCB Railroad Transformers Should Qualify as "Totally Enclosed" Uses Under Section 6(e)(2)(C) of the Toxic Substances Control Act

Reply comments presented by SEPTA and New York MTA proposed that their PCB railroad transformers should be defined as "totally enclosed" uses and thereby excluded from this use rule. Under section 6(e)(2)(C) of TSCA, the continued use of PCBs in a "totally enclosed" manner is permitted. TSCA defines that category as "any manner which will ensure that any exposure of human beings or the environment to a

polychlorinated biphenyl will be insignificant as determined by the Administrator." As presented in EPA regulations at 40 CFR 761.20, the Agency found that any exposure of humans or the environment to PCBs as measured or detected by any scientifically acceptable analytical method is a significant exposure.

In the comments of SEPTA and New York MTA, no information was provided by these organizations that the use of their railroad transformers would result in no exposure to humans or the environment. Documentation was provided concerning the number of recorded spill accidents during 1980 and 1981. According to these data, in 1980 and 1981, there were eleven recorded spill events in the New York MTA and ConDOT service system (five recorded spills in 1980, six recorded spills in 1981). In 1981, there were 15 recorded spill events of 168 gallons of dielectric fluid, including PCBs, in the SEPTA system.

Through data received during this rulemaking activity from the affected railroad organizations, estimates of maximum leakage from these PCB transformers in active service have been developed. These estimates are presented in Unit IV of this preamble.

The U.S. Circuit Court of Appeals for the District of Columbia in *Environmental Defense Fund v. Environmental Protection Agency*, 636 F.2d 1267 (1980), has reviewed the legal status of the current use rule for PCB railroad transformers. In footnote 31 of that decision, the Court acknowledged the Agency conclusion that railroad transformers cannot be considered totally enclosed. In addition, the Court stated that "[b]ecause of the strenuous conditions under which they operate, railroad transformers often leak PCBs onto railroad beds, risking exposure to the environment and to workers and other persons near rail lines." 636 F.2d at 1279.

B. Transfer of PCB Railroad Transformers to Museums or Historical Societies

In its comments, Amtrak has proposed amendments to 40 CFR 761.20 concerning the distribution in commerce of PCB equipment, including PCB railroad transformers. First, Amtrak proposed that the owner of a railroad locomotive or self-propelled car with a PCB railroad transformer may at any time sell or otherwise distribute in commerce or export the locomotive or car provided that certain conditions are met. These conditions are that these Amtrak transformers must contain

dielectric fluid with either: (1) A concentration level no greater than 60,000 ppm or (2) the concentration level set by EPA for the first retrofill requirement in effect six months after the date of sale, distribution, or export, whichever is lower. Second, Amtrak proposed that the owner of an electric locomotive or self-propelled car containing a PCB Transformer may at any time transfer ownership of such locomotive or car to a "reputable historical society or institution" for permanent display. This transfer would be permitted provided that certain precautions were met prior to the transfer. These precautions would be: (1) All free-flowing dielectric fluid would be drained from the transformer; (2) the transformer would be filled with an appropriate non-PCB solvent and allowed to stand for a period of not less than 18 hours; (3) a sufficient quantity of appropriate absorbent material would be placed in the transformer to absorb any remaining fluid; (4) the transformer would be sealed by welding or another process to insure that it is totally enclosed within the statutory definition; and (5) the transformer must be prominently marked as a PCB Transformer, consistent with EPA marking rules presented in 40 CFR 761.40(a)(2).

The first proposal of Amtrak should be submitted in the form of an exemption petition under section 6(e) of TSCA for the distribution in commerce of railroad cars and locomotives equipped with railroad transformers with PCB fluid. Section 6(e)(3)(A)(ii) of TSCA prohibits the distribution in commerce of PCBs after July 1, 1979 unless the agency has granted an exemption for the activities. Section 6 of TSCA provides exemption procedures applicable to Amtrak's proposal for the distribution in commerce of locomotives or self-propelled cars equipped with a PCB railroad transformer. Exemption petitions must be consistent with procedures presented in section 6(e)(3)(B) of TSCA and EPA regulations at 40 CFR Part 750.

EPA regulatory provisions in 40 CFR Part 761 are applicable to Amtrak's second proposal for the transfer of ownership of GG-1 locomotives to historical institutions and the related retirement of these locomotives with their PCB railroad transformers. PCB Transformers must be disposed in accordance with the disposal requirements of the PCB rule, 40 CFR 761.60. Section 761.60(b) of the disposal requirements states that drained PCB Transformers must be sent either to an incinerator under § 761.70 or to an EPA-

approved chemical waste landfill. EPA rules at 40 CFR 761.65 provide requirements for transformers in locomotives or cars that are stored for disposal. Furthermore, if the transformers were not disposed of, the museums and historical societies would be using PCBs in a manner not found to be totally enclosed or authorized by the PCB rule. Such uses are banned under section 6(e)(2)(A) of TSCA.

The use authorization for PCBs in electrical equipment in the May 1979 rule has recently been amended. The final amendment to the use authorization was published in the *Federal Register* of August 25, 1982 (47 FR 37342). Included in this final amendment are modifications to the distribution in commerce provisions in 40 CFR 761.20 for electrical equipment with PCB fluid. This provision allows the distribution in commerce of all intact, nonleaking electrical equipment with PCB fluid including PCB railroad transformers. Hence, under this provision, in order to transfer ownership of these GG-1 locomotives, Amtrak must ensure that these locomotives are "intact" and "nonleaking."

VI. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this amendment to the PCB rule is not a "major rule" as that term is defined in section 1(b) of the Executive Order. Therefore, EPA has not prepared a Regulatory Impact Analysis for this rule.

EPA has concluded that the amendment is not "major" under the criteria of section 1(b) because the annual effect of the rule on the economy will be less than \$100 million; it will not cause a major increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete in domestic or foreign markets. Indeed, it will reduce the burden on railroad organizations to comply with the PCB rule. By extending the performance deadlines in the May 1979 rule and eliminating an expiration deadline for this use of PCBs at or below 1,000 ppm, this amendment should reduce costs for the railroad industry and for governmental bodies that operate railroads.

This regulation was submitted to the Office of Management and Budget for

review as required by Executive Order 12291.

VII. Regulatory Flexibility Act

Section 604 of the Regulatory Flexibility Act (5 U.S.C. 604) requires EPA to prepare a "regulatory flexibility analysis" in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking shall be published. The "regulatory flexibility analysis" describes the effect of a final rule on small business entities.

Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), however, provides that section 604 of the Act "shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

Since the effect of this rule avoids the economic impact associated with a disruption of passenger railroad service, and no negative economic effect is expected upon any business entity from this amendment, the Administrator of EPA has certified that promulgation of this amendment will not have a significant economic impact on a substantial number of small entities. Therefore, a "regulatory flexibility analysis" is not required and will not be prepared for this rulemaking.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1980, 44 U.S.C. 3501 *et seq.*, requires Federal agencies to submit certain collection of information requests to the Office of Management and Budget (OMB) for its review and approval. Without appropriate approval from OMB under the Act, agencies may not impose penalties for noncompliance with certain types of collection of information requests, including recordkeeping requirements. Based on a review of the specific recordkeeping requirements under this use rule, EPA has determined that these requirements do not meet the threshold criteria for "collection of information" under the PRA.

The recordkeeping requirements of this use rule are presented in 40 CFR 761.30(b)(1)(iii). This provision requires that the concentration of PCBs in the dielectric fluid of railroad transformers must be measured at two points in time:

(1) Immediately upon completion of any authorized servicing of a railroad transformer conducted for the purpose of reducing the PCB concentration in the transformer, and (2) between 12 and 24 months after each servicing conducted

under this rule. In addition, these measurements must be recorded and retained until January 1, 1991.

This amendment does not alter the recordkeeping requirements contained in 40 CFR 761.30 (b)(1)(iii) of the current rule. The only change in the recordkeeping requirements from the current rule refers to the extension of the performance deadlines and the related extension of the period for railroad organizations to measure the concentration of PCBs in the dielectric fluid of railroad transformers. Under this change, these organizations would be required to measure the concentration of PCBs for compliance with the respective performance deadlines through July 1, 1986, rather than through July 1, 1984, under the current rule.

Under section 3502(4) of the Act, "collection of information" includes "the obtaining or soliciting of facts or opinions by an agency through the use of written report forms, application forms, schedules, questionnaires, reporting or recordkeeping requirements, or other similar methods." In addition, to meet the statutory definition of "collection of information," any recordkeeping requirements under this use rule must request either of the following responses: (1) "Answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States" or (2) "answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes." The recordkeeping requirements under this use rule do not meet either of these categories. With respect to the first response category, the requirements in the use rule are applicable to less than 10 affected railroad organizations with PCB railroad transformers in either active or inactive service. With respect to the second category, none of the affected railroad organizations are "agencies, instrumentalities, or employees of the United States." In addition, the testing records concerning PCB concentration levels that must be maintained through January 1, 1991 are to measure compliance with the performance deadlines, and are not to be used for general statistical purposes.

IX. Official Record of Rulemaking

In accordance with the requirements of section 19 (a)(3)(E) of TSCA, EPA is issuing the following list of documents constituting the record of this rulemaking. However, this list does not include public comments, the transcript

of the rulemaking, hearing, or submissions made at the rulemaking hearing or in connection with it. These documents are exempt from Federal Register listing under section 19(a)(3). A full list of these materials will be available on request from the Industry Assistance Office listed under "FOR FURTHER INFORMATION CONTACT."

A. Previous Rulemaking Records

1. Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions Rule" published in the Federal Register of May 31, 1979, (44 FR 31514).

2. Official Rulemaking Record from "Proposed Amendment to Use Authorization for PCB Railroad Transformers" published in the Federal Register of November 18, 1981, (46 FR 56626).

B. Support Documents

3. USEPA, OTS, "Cost-Effectiveness Analysis for the PCB Railroad Transformer Rule Amendment."

4. USEPA, OTS, "Response to Comments on Health Effects of PCBs."

5. USEPA, OTS, "Support Document for the PCB Railroad Transformer Rule: Response to Comments."

C. Reports

6. Buser, H. R., "Formation of Polychlorinated Dibenzofurans (PCDFs) and Dibenzo-p-dioxins (PCDDs) from the Pyrolysis of Chlorobenzenes," 8 *Chemosphere*, 415 (1979).

X. Statutory Authority

Under section 6(e) of TSCA (15 U.S.C. 2605), the Administrator may by rule authorize the manufacture, processing, distribution in commerce, or use (or any combination of such activities) of any PCBs in other than a totally enclosed manner if the Administrator finds that it will not present an unreasonable risk of injury to human health or the environment.

List of Subjects in 40 CFR Part 761

Hazardous materials, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Environmental protection.

Dated: December 20, 1982.

Anne M. Gorsuch,
Administrator.

PART 761—[AMENDED]

Therefore, in 40 CFR 761.30, the introductory text in paragraph(b) and paragraph(b)(1) are revised, and paragraph(b)(2)(vii) is added to read as follows:

§ 761.30 Authorizations.

(b) *Use in and servicing of railroad transformers.* PCBs may be used in transformers in railroad locomotives or railroad self-propelled cars ("railroad transformers") and may be processed and distributed in commerce for purposes of servicing these transformers in a manner other than a totally enclosed manner subject to the following conditions:

(1) *Use restrictions.* (i) After July 1, 1983, the number of railroad transformers containing a PCB concentration greater than 60,000 ppm (6.0 percent on a dry weight basis) in use by any affected railroad organization may not exceed two-thirds of the total railroad transformers containing PCBs in use by that organization on January 1, 1982.

(ii) After January 1, 1984, the number of railroad transformers containing a PCB concentration greater than 60,000 ppm in use by any affected railroad organization may not exceed one-third of the total railroad transformers containing PCBs in use by that organization on January 1, 1982.

(iii) After July 1, 1984, use of railroad transformers that contain dielectric fluids with a PCB concentration greater than 60,000 ppm is prohibited.

(iv) After July 1, 1985, the number of railroad transformers containing a PCB concentration greater than 1,000 ppm (0.1 percent on a dry weight basis) in use by any affected railroad organization may not exceed two-thirds of the total railroad transformers containing PCBs in use by that organization on July 1, 1984.

(v) After January 1, 1986, the number of railroad transformers containing a PCB concentration greater than 1,000 ppm in use by any affected railroad organization may not exceed one-third of the total railroad transformers containing PCBs in use by that organization on July 1, 1984.

(vi) After July 1, 1986, use of railroad transformers that contain dielectric fluids with a PCB concentration greater than 1,000 ppm is prohibited.

(vii) The concentration of PCBs in the dielectric fluid contained in railroad transformers must be measured:

(A) Immediately upon completion of any authorized servicing of a railroad transformer conducted for the purpose of reducing the PCB concentration in the dielectric fluid in the transformer, and
(B) Between 12 and 24 months after each servicing conducted in accordance with paragraph (b)(1)(vii)(A) of this section;

(C) The data obtained as a result of paragraph (b)(1)(vii) (A) and (B) of this

section shall be retained until January 1, 1991.

(2) * * *

(vii) A PCB Transformer may be converted to a PCB-Contaminated Transformer or to a non-PCB Transformer by draining, refilling, and/

or otherwise servicing the railroad transformer. In order to reclassify, the railroad transformer's dielectric fluid must contain less than 500 ppm (for conversion to PCB-Contaminated Transformer) or less than 50 ppm PCB (for conversion to a non-PCB

Transformer) after a minimum of three months of inservice use subsequent to the last servicing conducted for the purpose of reducing the PCB concentration in the transformer.

* * * * *
[FR Doc. 82-35520 Filed 12-30-82; 8:45 am]
BILLING CODE 6560-50-M