

in Commerce and Use Prohibitions; Use in Electrical Equipment" published in the *Federal Register* of August 25, 1982, (47 FR 37342).

(5) Official rulemaking record from "Polychlorinated Biphenyls (PCBs); Manufacture, Processing, Distribution in Commerce and Use Prohibitions; Use in Microscopy and Research and Development" published in the *Federal Register* of November 17, 1983, (48 FR 52402).

(6) Official rulemaking record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce Exemptions; Proposed Rules" published in the *Federal Register* of November 1, 1983 (48 FR 50486).

B. Federal Register Notices

(7) USEPA, "Polychlorinated Biphenyls (PCBs) Disposal and Marking Final Regulation". 43 FR 7150, February 17, 1978.

(8) USEPA, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions". 44 FR 31514, May 31, 1979.

(9) USEPA, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Equipment". 47 FR 37342, August 25, 1982.

(10) USEPA, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Closed and Controlled Waste Manufacturing Processes". 47 FR 46980, October 21, 1982.

(11) USEPA, "Polychlorinated Biphenyls (PCBs) Manufacture, Processing, Distribution in Commerce and Use Prohibitions; Use in Microscopy and Research and Development". 48 FR 52402, November 17, 1983.

(12) USEPA, "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce Exemptions; Proposed Rules". 48 FR 50486, November 1, 1983.

C. Support Documents

(13) USEPA, OPTS, EED, "Letter Soliciting Data on Use Authorization for Use of PCBs in Microscopy." April 13, 1983.

(14) Philadelphia Museum of Art, Marigene H. Butler, "Comments on Use Authorization for Microscopy." April 29, 1983.

(15) USEPA, OPTS, EED, "Record of Telephone Communication Between Martha Goodway of the Smithsonian and Denise Keehner of EPA." May 9(?), 1983.

(16) R.P. Cargille Laboratories, Inc., William J. Sacher, "Petition for PCB Processing and Distribution in Commerce Exemption." July 18, 1983.

(17) McCrone Research Institute, Walter C. McCrone, "Petition from PCB Processing and Distribution in Commerce Prohibitions." July 9, 1983.

(18) McCrone Research Institute, Walter C. McCrone, "Letter Describing Safety Precautions in Handling of PCBs." January 7, 1983.

(19) Journal of the American Medical Association, "Letter: Polychlorinated Biphenyls in Microscope Immersion Oil." April 1, 1983.

VIII. Judicial Review

Judicial review of this final rule may be available under section 19 of TSCA in the United States Court of Appeals for the District of Columbia Circuit or for the circuit in which the person seeking review resides or has its principal place of business. To provide all interested persons an equal opportunity to file a timely petition for judicial review and to avoid so called "races to the courthouse," EPA has decided to promulgate this rule for purposes of judicial review two weeks after publication in the *Federal Register*, as reflected in "DATES" in this notice. The effective date has, in turn been calculated from the promulgation date.

List of Subjects in 40 CFR Part 761

Hazardous materials, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Environmental protection. (Sec. 8, Pub. L. 94-469; 90 Stat. 2025 (15 U.S.C. 2605))

Dated: June 27, 1984.

Alvin L. Alm,
Acting Administrator.

PART 761—[AMENDED]

Therefore, 40 CFR 761.30 is amended by revising paragraphs (j) and (k) and

adding paragraphs (n) and (o) to read as follows:

§ 761.30 Authorizations.

* * * * *

(j) *Small quantities for research and development.* PCBs may be used in small quantities for research and development, as defined in § 761.3(ee), in a manner other than a totally enclosed manner, indefinitely. Manufacture, processing, and distribution in commerce of PCBs in small quantities for research and development is permitted only for persons who have been granted an exemption under TSCA section 6(e)(3)(B).

(k) *Microscopy mounting medium.* PCBs may be used as a permanent microscopic mounting medium in a manner other than a totally enclosed manner indefinitely. Manufacture, processing, and distribution in commerce of PCBs for purposes of use as a mounting medium are permitted only for persons who are granted an exemption under TSCA section 6(e)(3)(B).

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(n) *Microscopy immersion oil.* PCBs may be used as an immersion oil in fluorescence microscopy, in a manner other than a totally enclosed manner indefinitely. Manufacture, processing, and distribution in commerce of PCBs for purposes of use as a low fluorescence immersion oil are permitted only for persons who are granted an exemption under TSCA section 6(e)(3)(B).

(o) *Optical liquids.* PCBs may be used as optical liquids in a manner other than a totally enclosed manner indefinitely. Manufacture, processing, and distribution in commerce of PCBs for purposes of use as optical liquids are permitted only for persons who are granted an exemption under TSCA section 6(e)(3)(B).

[FR Doc. 84-17901 Filed 7-9-84; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-66008B; TSH-FRL-2584-7]

Polychlorinated Biphenyls (PCBs); Request for Additional Comments on Certain Individual and Class Petitions for Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for additional comments on certain individual and class petitions for exemption.

SUMMARY: This proposed rule related notice addresses 50 of the remaining individual and class petitions for exemption from the prohibition against the manufacture, processing, and distribution in commerce of PCBs. EPA is issuing this notice to solicit comments on 49 petitions for exemption to manufacturers, process and distribute in commerce substances or mixtures inadvertently contaminated with 50 parts per million (ppm) or greater PCBs. All of these petitions are affected by the final PCB Exclusions, Exemptions, and Use Authorizations Rule (hereinafter referred to as the Uncontrolled PCB Rule) published elsewhere in this issue of the **Federal Register**, which may make an exemption unnecessary. EPA also is issuing this notice to solicit comments on Ward Transfer Co., Inc.'s petition for exemption to buy and sell used PCB-contaminated transformers. In evaluating this exemption petition, EPA raised a new issue about whether granting an exemption would result in an unreasonable risk or injury to health or the environment.

DATES: (1) The 49 petitioners whose exemption petitions are affected by the Uncontrolled PCB Rule must evaluate that rule and decide whether they still need an exemption to continue their activities. If a petitioner still needs an exemption, it must submit written comments renewing its exemption petition no later than October 1, 1984.

(2) For Ward Transformer Co., Inc.'s exemption petition, EPA will accept comments from petitioner and other interested parties until August 23, 1984.

(3) An informal public hearing, if requested, will be held in Washington, D.C., on September 6, 1984. The exact time and location of the hearing will be available by calling EPA's TSCA Assistance Office. EPA intends to evaluate the comments submitted and to conduct rulemaking in accordance with the procedures described in Unit II of this preamble. Reply comments made in

response to issues raised at the hearing must be submitted no later than one week after the hearing.

ADDRESSES: Since some comments pertaining to the 51 deferred exemption petitions may contain confidential business information, all comments should be sent in triplicate to: TSCA Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, D.C. 20460.

Comments should include the docket number OPTS-66008B. Comments received on this proposed rule related notice will be available for reviewing and copying from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays, in Rm. E-107, Environmental Protection Agency, 401 M St., SW., Washington, D.C.

The exact time and location of the hearing, if requested, will be available by calling EPA's TSCA Assistance Office.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), in Washington, D.C.: (554-1404), outside the USA: (Operator-202-554-1414).

SUPPLEMENTARY INFORMATION:

I. Introduction

The proposed PCB Exemptions Rule published in the **Federal Register** of November 1, 1983 (48 FR 50486) addressed 172 pending individual and class exemption petitions. During the comment period on the proposed rule, 17 of the 172 exemption petitions were withdrawn or dismissed, and four new exemption petitions were accepted for consideration. Thus, 159 exemption petitions remain to be resolved. EPA is taking action on 109 exemption petitions in the final PCB Exemptions Rule published elsewhere in this issue of the **Federal Register**. In this proposed rule related notice, EPA is soliciting comments on the other 50 exemption petitions.

II. Comments and Rulemaking Procedures

EPA encourages commentors to submit nonconfidential information. However, commentors who believe that they can state their position only by using confidential information may submit it to the Agency in accordance with the requirements of 40 CFR 750.16 (for manufacturing exemptions) or 40 CFR 750.36 (for processing and

distribution in commerce exemptions). Persons who submit confidential information must, at the same time, submit a nonconfidential summary of the information claimed to be confidential for inclusion in the public record. Please mark confidential information "CONFIDENTIAL" and send it via certified mail to the TSCA Public Information Office (see address listed under "ADDRESS"). Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR Part 2. Information not marked "CONFIDENTIAL" will be placed in the public record and may be publicly disclosed by EPA without prior notice.

EPA will conduct all public hearings in accordance with EPA's "Procedures for Conducting Rulemaking Under section 6 of the Toxic Substances Control Act" (40 CFR Part 750). Commentors who want to participate in the public hearings must write to EPA's TSCA Assistance Office (see address listed under "FOR FURTHER INFORMATION CONTACT") and indicate that they want to participate. The public hearings are meant to provide an opportunity for commentors to present additional information or to discuss new issues, not to repeat information already presented to EPA in written comments.

III. Background

A. Statutory Authority

Section 6(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), generally prohibits the manufacture of PCBs after January 1, 1979, and the processing and distribution in commerce of PCBs after July 1, 1979.

Section 6(e)(3)(B) of TSCA provides that any person may petition the Administrator for an exemption from the prohibition against the manufacture, processing, and distribution in commerce of PCBs. The Administrator may by rule grant an exemption if the Administrator finds that "(i) an unreasonable risk of injury to health or environment would not result, and (ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl." The Administrator may set terms and conditions for an exemption and may grant an exemption for not more than one year.

EPA's Interim Procedural Rules for PCB Manufacturing Exemptions describe the required content of manufacturing exemption petitions and

the procedures EPA follows in rulemaking on exemption petitions. Those rules were published in the *Federal Register* of November 1, 1978 (43 FR 50905) and are codified at 40 CFR 750.10-750.21.

EPA's Interim Procedural Rules for PCB Processing and Distribution in Commerce Exemptions describe the required content of processing and distribution in commerce exemption petitions and the procedures EPA follows in rulemaking on exemption petitions. Those rules were published in the *Federal Register* of May 31, 1979 (44 FR 31558) and are codified at 40 CFR 750.30-750.41.

B. History of PCB Rulemaking

The history of PCB rulemaking is described in detail in the proposed PCB Exemptions Rule published in the *Federal Register* of November 1, 1983 (48 FR 50486). Since that proposed rule was published, EPA has issued two final rules that affect EPA's disposition of these pending exemption petitions.

First, the Uncontrolled PCB Rule published elsewhere in this issue of the *Federal Register* addresses the manufacture, processing, distribution in commerce, and use of certain inadvertently generated and recycled PCBs in low level concentrations. Among other things, that rule does the following: (1) Amends the PCB rule published in the *Federal Register* of October 21, 1982 (47 FR 46980) [the Closed and Controlled Waste Manufacturing Processes Rule] by excluding additional processes from regulation; and (2) defers action on 49 petitions for exemption to manufacture, process, and distribute in commerce inadvertently generated PCB pending the submission of additional information by petitioners.

Second, the PCB Exemptions Rule published elsewhere in this issue of the *Federal Register* takes final action on 109 of the pending exemption petitions and defers action on the 50 exemption petitions addressed in this proposed rule related notice.

C. Effect of This Notice on Previous Policy Statements

In the *Federal Register* of January 2, 1979 (44 FR 108), EPA announced that petitioners who had previously filed manufacturing exemption petitions could continue the activities for which they sought exemption until EPA acted on their petitions. In the *Federal Register* of March 5, 1980 (45 FR 14247), EPA extended this policy to allow all petitioners to continue the activities for which they sought exemption until EPA acted on their petitions, as long as the

activities were underway before January 1, 1979 (for manufacturing) and July 1, 1979 (for processing and distribution in commerce).

The 49 petitioners whose exemption petitions are affected by the Uncontrolled PCB Rule must evaluate that rule and decide whether they still need an exemption to continue their activities. If a petitioner still needs an exemption, it must submit written comments renewing its exemption petition no later than October 1, 1984. If an exemption petition is renewed, EPA will allow the petitioner to continue the activities for which it requests exemption until EPA has acted to grant or deny the exemption. If the exemption petition is not renewed, EPA will dismiss the exemption petition.

In evaluating Ward Transformer Co., Inc.'s petition for exemption to buy and sell used PCB-contaminated transformers, EPA is raising a new issue about whether granting an exemption would result in an unreasonable risk to health or the environment. This issue is discussed in detail in Unit VII of this preamble. EPA will accept comments until August 23, 1984. EPA will allow the petitioner to continue buying and selling used PCB-contaminated transformers until EPA has acted to grant or deny the exemption.

EPA intends to continue its policy of requiring petitioners who file late exemption petitions to show "good cause" why EPA should accept the petition for consideration, as described in the notice published in the *Federal Register* of March 5, 1980 (45 FR 14247).

IV. Unreasonable Risk Finding

Section 6(e)(3)(B)(i) of TSCA requires a petitioner to show that granting an exemption would not result in an unreasonable risk of injury to health or the environment.

To determine whether a risk is unreasonable, EPA balances the probability that harm will occur against the benefits to society from granting an exemption. Specifically, EPA considers the following factors:

1. The effects of PCBs on human health and the environment, including the magnitude of PCB exposure to humans and the environment.
2. The benefits to society of granting an exemption and the reasonably ascertainable economic consequences of denying an exemption petition.

These are the same factors that EPA must consider in deciding whether a chemical substance or mixture presents an unreasonable risk of injury to health or the environment under sections 6(a) and 6(e) of TSCA.

A. Effects on Human Health and the Environment

In deciding whether to grant an exemption, EPA considers the effects of PCBs on human health and the environment, including the magnitude of PCB exposure to humans and the environment. The effects of PCBs are described in various documents that are part of the rulemaking record for the PCB Ban Rule published in the *Federal Register* of May 31, 1979 (44 FR 31514). Before the proposed PCB Exemptions Rule was published, EPA evaluated this information, plus new information submitted to the Agency and other recent literature. The results are presented in EPA's "Response to Comments on Health Effects of PCBs" (August 19, 1982). During the comment period on the proposed PCB Exemptions Rule, two commentators presented additional information about the adverse health effects of PCBs. EPA evaluated this information, as well as other recent literature, and has determined that none of the information submitted changes EPA's conclusions about the health effects of PCBs. The results are presented in EPA's "Response to Comments on the Proposed PCB Exemptions Rule" (June 1984) and "Response to Comments on the Proposed Uncontrolled PCB Rule" (June 1984). All of these documents are included in the rulemaking record and are summarized below. Copies of these documents are available from EPA's TSCA Assistance Office (see address listed under "FOR FURTHER INFORMATION CONTACT").

1. Health Effects

EPA has determined that PCBs are toxic and persistent. PCBs can enter the body through the lungs, gastrointestinal tract, and skin, circulate throughout the body, and be stored in the fatty tissue.

Available animal studies indicate an oncogenic potential, the degree of which would depend on exposure. Available epidemiological data are not adequate to confirm or negate oncogenic potential in humans at this time. Further epidemiological research is needed to correlate human and animal data, but EPA finds no evidence to suggest that the animal data would not predict an oncogenic potential in humans.

In addition, EPA finds that PCBs may cause reproductive effects, developmental toxicity, and oncogenicity 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 developmental toxic effects. Postnatal effects have been demonstrated on immature animals, following exposure to PCBs prenatally and via breast milk.

In some cases chloracne may occur in humans exposed to PCBs. Severe cases of chloracne are painful, disfiguring, and may require a long time before the symptoms disappear. Although the effects of chloracne are reversible, EPA considers these effects to be significant.

2. Environmental Effects

Certain PCB congeners are among the most stable chemicals known and decompose very slowly once they are released into the environment. They remain in the environment and are taken up and stored in the fatty tissue of organisms. EPA has concluded that PCBs can be concentrated in freshwater and marine organisms. The transfer of PCBs up the food chain from phytoplankton to invertebrates, fish, and mammals can result ultimately in human exposure through consumption of PCB-containing food sources.

Available data show that PCBs affect the productivity of phytoplankton and the composition of phytoplankton communities; cause deleterious effects on environmentally important freshwater invertebrates; and impair reproductive success in birds and mammals.

PCBs also 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 also have been demonstrated.

3. Risks

Toxicity and exposure are the two basic components of risk. Based on animal data, EPA concluded that in addition to chloracne, there is the potential for reproductive effects, developmental toxicity, and oncogenicity in humans. EPA also concluded that PCBs present a hazard to the environment.

Minimizing exposure to PCBs should minimize any potential risk. EPA takes exposure into consideration when evaluating each exemption petition, as discussed in later units of this preamble.

B. Benefits and Costs

The benefits to society of granting an exemption vary, depending on the

activity for which exemption is requested. The reasonably ascertainable costs of denying an exemption vary, depending on the individual petitioner. EPA takes the benefits and costs into consideration when evaluating each exemption petition, as discussed in later units of this preamble.

V. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA requires petitioners to make good faith efforts to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for PCBs. EPA considers several factors in determining whether a petitioner has made good faith efforts. For each exemption petition, EPA considers the kind of exemption the petitioner is requesting, whether substitutes exist and are readily available, and whether the petitioner expended time and money to develop or search for a substitute. In each case, the burden is on the petitioner to show specifically what it does to substitute non-PCBs for PCBs or to show why it does not seek to substitute non-PCBs for PCBs. EPA considers the attempt to make good faith efforts when evaluating each exemption petition, as discussed in later units of this preamble.

VI. Actions Affected by the Uncontrolled PCB Rule

In earlier proposed PCB Exemptions Rule, EPA deferred action on 49 petitions for exemption to manufacture, process, or distribute in commerce substances or mixtures inadvertently contaminated with 50 ppm or greater PCBs. EPA did so because the activities for which each of these petitioners requested exemption would be affected by the ongoing Uncontrolled PCB Rulemaking. Only 49 of these exemption petitions remain to be resolved because EPA dropped one of the exemption petitions which is not affected by the Uncontrolled PCB Rule and which was incorrectly included in the earlier proposed PCB Exemptions Rule.

In this notice EPA is still deferring action on these 49 exemption petitions because the final Uncontrolled PCB Rule, published elsewhere in this issue of the Federal Register, sets new regulatory cutoffs for the inadvertent manufacture, processing, distribution in commerce, and use of certain PCBs. EPA recognizes that the new regulatory cutoffs may affect many of the 49 petitions for exemption to manufacture, process, or distribute in commerce inadvertently generated PCBs. For example, some petitioners are engaged in activities that, because of the

discounting for monochlorinated and dichlorinated biphenyls, involve concentrations of PCBs at levels below the new regulatory cutoffs and, therefore, will no longer need an exemption. On the other hand, other petitioners are engaged in activities that involve concentrations of PCBs at levels above the new regulatory cutoffs, and, therefore, will still need an exemption to continue their activities.

Each petitioner should review the Uncontrolled PCB Rule to decide whether it still needs an exemption. If an exemption is still needed, a petitioner must renew its exemption petition by submitting updated information to show that granting an exemption would not result in an unreasonable risk of injury to health or the environment and to show that it made good faith efforts to develop non-PCB substitutes for PCBs. Petitioners must submit the information required by 40 CFR 750.10-750.21 (for manufacturing exemption petitions) and 40 CFR 750.30-750.41 (for processing and distribution in commerce exemption petitions) no later than October 1, 1984. EPA will evaluate the new information submitted and will then propose to grant or deny each petition based on the information submitted.

If a petitioner does not renew its exemption petition by October 1, 1984, EPA will assume that the petitioner no longer needs an exemption and will dismiss the exemption petition. The effect of such a dismissal is that the petitioner would not be allowed to continue the activities if it does not notify EPA of compliance with the Uncontrolled PCB Rule. The continuation of such activities would be a violation of section 15 of TSCA and would make the petitioner liable for penalties under section 16 of TSCA.

Each of the 49 exemption petitions, except for one petition submitted by Mobay Chemical Corp., is for activities that were underway before January 1, 1979 (for manufacturing) or July 1, 1979 (for processing and distribution in commerce). Each of these petitioners (except Mobay Chemical Corp.) is still allowed to continue the activities for which it requested exemption until EPA acts on the petition, in accordance with the EPA policy described in Unit III.C of this preamble. Mobay Chemical Corp. is not allowed to engage in the activities for which it requested exemption until EPA acts on the petition, because such activities were not underway before July 1, 1979.

Therefore, each of the following 49 exemption petitioners should evaluate the effects of the Uncontrolled PCB Rule

and, if necessary, renew its exemption petition by October 1, 1984:

A. Manufacturing Exemptions

Aluminum Co. of America, Pittsburgh, PA 15219 (ME-3).
 American Hoechst Corp., Somerville, NJ 08876 (ME-5).
 Diamond Shamrock Corp., Pasadena, TX 77501 (ME-27).
 Dow Chemical Co., Midland, MI 48640 (ME-29, ME-30 and ME-30.1).
 General Electric Co., Fairfield, CT 06431 (ME-39).
 Hilton-Davis Chemical Co., Division of Sterling Drug Inc., Cincinnati, OH 45237 (ME-50).
 Olin Corp., Stamford, CT 06904 (ME-75).
 PPG Industries, Inc., Pittsburgh, PA 15222 (ME-81 and ME-81.1).
 SDS Biotech Corp., Painesville, OH 44077 (ME-28 and ME-28.1).
 Stauffer Chemical Co., Westport, CT 06880 (ME-90).

B Processing and Distribution in Commerce Exemptions

Acme Printing Ink Co., Chicago, IL 60607 (PDE-164.1).
 Aluminum Co. of America, Pittsburgh, PA 15219 (PDE-13).
 American Can Co., Greenwich, CT 06830 (PDE-14).
 American Cyanamid Co., Savannah, GA 31402 (PDE-16).
 American Hoechst Corp., Somerville, NJ 08876 (PDE-70.5).
 American Paper Institute, Inc., Washington, DC 20036 (PDE-89).
 American Thermoplastics Corp., Subsidiary of Phillips Petroleum Co., Houston, TX 77020 (PDE-245.1).
 Binney & Smith, Inc., Easton, PA 18042 (PDE-34).
 Buckeye Printing Ink Co., Inc., Columbus, OH 43209 (PDE-164.2).
 Chemical Specialties Manufacturers Association, Washington, DC 20036 (PDE-42).
 Columbia Paint Corp., Huntington, WV 25728 (PDE-47).
 Crown Metro, Inc., Greenville, SC 29606 (PDE-70.1).
 Daicolor Division, Dainichiseika Color & Chemicals America, Inc., Pine Brook, NJ 07058 (PDE-58).
 Dow Chemical Co., Midland, MI 48640 (PDE-64 and PDE-67).
 Dow Chemical Co., Plaquemine, LA 70764 (PDE-68).
 Eastman Kodak Co., Eastman Chemicals Division, Kingsport, TN 37662 (PDE-70.6).
 Forrest Paint Co., Eugene, OR 97402 (PDE-90).
 Galaxie Chemical Corp., Paterson, NJ 07524 (PDE-95).
 Goodyear Tire & Rubber Co., Akron, OH 44316 (PDE-102).

Hilton-Davis Chemical Co., Division of Sterling Drug Inc., Cincinnati, OH 45237 (PDE-70.4).
 Ideal Toy Corp., Hollis, NY 11423 (PDE-70.3).
 Inmont Corp., Clifton, NJ 07015 (PDE-123).
 Minnesota Mining & Manufacturing Co., St. Paul, MN 55133 (PDE-157.2).
 Mobay Chemical Corp., Dyes and Pigments Division, Union, NJ 07083 (PDE-157.10).
 National Association of Chemical Distributors, Chicago, IL 60602 (PDE-162).
 National Paint and Coatings Association, Washington, DC 20005 (PDE-167).
 Prestige Printing Ink Co., Fort Worth, TX 76105 (PDE-70.2).
 Reed Plastics Corp., Holden, MA 01520 (PDE-224).
 Soap and Detergent Association, New York, NY 10016 (PDE-244).
 Society of the Plastics Industry, Inc., New York, NY 10017 (PDE-245).
 Uniroyal Chemical Co., Rovell Polymers Group, Naugatuck, CT 06770 (PDE-283).
 Uniroyal, Inc., Middlebury, CT 06749 (PDE-284).
 U.S. Department of the Treasury, Bureau of Engraving and Printing, Washington, DC 20228 (PDE-288).
 United States Printing Ink Co., East Rutherford, NJ 07073 (PDE-164.3).

VII. Ward Transformer Co., Inc.

Ward Transformer Co., Inc., Raleigh, NC 27622 (PDE-294), submitted a petition for exemption to process and distribute in commerce PCBs in buying and selling used PCB-contaminated transformers. Since the requested exemption is for an activity that was underway before July 1, 1979, the petitioner has been allowed to continue the activities for which it requested exemption until EPA acts on the petition, in accordance with the EPA policy described in Unit III.C of this preamble.

The petitioner is engaged in the following activities for which an exemption is required: (1) Buying and selling PCB transformers or PCB-contaminated transformers without introducing PCBs into these transformers; and (2) buying PCB transformers or PCB-contaminated transformers, introducing non-PCB fluid into these transformers, and then selling them before they have been reclassified as non-PCB transformers in accordance with the provisions of 40 CFR 761.30(a)(2)(v). The petitioner needs an exemption, because it is distributing in commerce PCBs, as defined in section 3(4) of TSCA and 40 CFR 761.3(i).

In the earlier proposed rule, EPA described certain activities that do not require an exemption. Section 6(e)(3)(C) of TSCA and 40 CFR 761.20(c)(1) allow a person to distribute in commerce PCB transformers and PCB-contaminated transformers without the need for an exemption, provided the following conditions are met:

(1) The transformer was originally distributed in commerce before July 1, 1979, for purposes other than resale.
 (2) The transformer is totally enclosed (i.e., intact and nonleaking) when it is distributed in commerce.
 (3) No PCBs are introduced into the transformer (including PCB fluid or PCB-contaminated fluid originally removed from and returned to the same transformer.)

(4) The transformer is distributed in commerce only within the United States. Unless each of the four conditions described above is met, a person must petition for and obtain an exemption from EPA before processing or distributing in commerce PCBs in buying and selling used PCB transformers and PCB-contaminated transformers.

EPA originally proposed to deny Ward Transformer's exemption petition, because the petitioner did not show that granting an exemption would not result in an unreasonable risk of injury to health or the environment. EPA determined that granting an exemption would result in some additional risk of exposure to humans or the environment to PCBs, due to the normal leaks and spills in handling liquid PCBs and transformers containing PCBs. In addition, EPA determined that the costs of denying these petitions would be small. Based on the limited information submitted by the petitioner, EPA estimated the incremental costs of denial to be \$90 to \$240 for an average size PCB-contaminated transformer, assuming that all the transformer fluid had to be replaced and disposed of. EPA recognized that the additional costs resulting from denial might render a portion of petitioner's buying and selling activity unprofitable, but concluded that the added risk of exposure to PCBs and the small costs of denial outweighed the relatively small benefits to society of granting an exemption.

Since Ward Transformer did not submit enough information to meet the first statutory requirement for obtaining an exemption, EPA did not base the proposed denial on the second requirement of TSCA section 6(e)(3)(B), which is that petitioner must make good faith efforts to substitute non-PCBs for PCBs.

During the comment period on the proposed rule, EPA received the following comments:

Ward Transformer commented that EPA should grant it an exemption to process and distribute in commerce PCB-contaminated fluid in buying and selling used PCB-contaminated transformers for the following reasons: (1) Granting an exemption would result in no unreasonable risk of injury to health or the environment, because Ward Transformer's bulk oil storage facilities, storage yard containment, runoff control, and waste water treatment comply with all EPA regulations for handling, storing, and disposing of PCBs; (2) Ward Transformer uses only non-PCB fluid (i.e., less than 50 ppm PCBs) to refill the used transformers that it buys and sells; and (3) denying an exemption would cause Ward Transformer to go out of business, because sales of 200 used transformers in 1982 represented 33 percent of its business and sales of 95 used transformers in 1983 represented 30 percent of its business. Ward Transformer commented that since all of these transformers were retrofilled with non-PCBs, it has shown good faith efforts to substitute non-PCBs for PCBs. During the public hearing on the proposed rule, EPA asked Ward Transformer why it does not reclassify PCB-contaminated transformers to non-PCB transformers in accordance with 40 CFR 761.30(a)(2)(v) before selling them. In its reply comment, Ward Transformer explained that it is not technically feasible for it to reclassify PCB-contaminated transformers to non-PCB transformers before selling them, because it does not have the facilities to energize and place "in service" for 90 days transformers having many different sizes and voltages. In addition, Ward Transformer stated that it would be prohibitively expensive to do so (an estimated \$100,000 per transformer in electricity costs alone).

The Electrical Apparatus Service Association (EASA) also submitted comments in support of granting an exemption to Ward Transformer and 264 other companies it represents. EASA's comments are basically the same as those of Ward Transformer: granting an exemption would allow a company to replace a customer's burned-out transformer in days instead of months, thereby helping small utilities and industrial companies provide efficient and reliable electrical service throughout the United States; would not result in human or environmental exposure to PCBs; and would avoid large costs of denial. During the public

hearing on the proposed rule, EPA asked EASA why a company does not reclassify PCB-contaminated transformers to non-PCB transformers in accordance with 40 CFR 761.30(a)(2)(v) before selling them. In its reply comment, EASA explained that it is not technically feasible for companies to reclassify PCB-contaminated transformers to non-PCB transformers in accordance with 40 CFR 761.30(a)(2)(v) before selling them, because repair shops do not have the facilities to energize and place "in service" for 90 days transformers having many different sizes and voltages.

In considering Ward Transformer's petition for an exemption, EPA is aware that Robert Ward, Jr., an officer of Ward Transformer, was convicted under the criminal provisions of section 16(b) of TSCA, 15 U.S.C. 2615, of knowingly or willfully causing the unlawful disposal of PCBs, and under 18 U.S.C. 2 of aiding and abetting the unlawful disposal of PCBs (*United States v. Ward*, 676 F.2d 94 (4th Cir. 1982), *cert. denied*, 103 S. Ct. 79 (1982)). Throughout this rulemaking, neither EPA nor Ward Transformer has raised the issue of Mr. Ward's PCB-related conviction as a factor in deciding whether to grant an exemption to Ward Transformer. In the absence of information to the contrary, EPA believes that Mr. Ward's conduct creates a cause for concern that granting an exemption to Ward Transformer may result in an unreasonable risk of injury to health or the environment. This concern can be allayed if Ward Transformer submits clear and convincing evidence to show that granting an exemption would not result in such a risk.

Therefore, EPA specifically solicits the following information on the issue of unreasonable risk: (1) A description of the methods Ward Transformer uses to protect workers during the buying, servicing, and selling of PCB transformers and PCB-contaminated transformers; (2) records of the amount of PCB fluid and PCB-contaminated fluid Ward Transformer collected and disposed of since July 1, 1982; (3) records of the PCB disposal sites and the owners or operators of those sites where Ward Transformer disposed of PCB fluid and PCB-contaminated fluid since July 1, 1982; (4) records of how many PCB transformers and PCB-contaminated transformers Ward Transformer purchased and from whom since July 1, 1982; (5) records of how many PCB transformers and PCB-contaminated transformers Ward Transformer sold and to whom since July 1, 1982; (6) the amount of Ward Transformer's total

sales (in dollars) since July 1, 1982; and (7) the reasonably ascertainable loss of sales (in dollars) if EPA were to deny an exemption to buy and sell used PCB-contaminated transformers. In addition, Ward Transformer should provide an affirmation that it has acted since July 1, 1982 in a manner that indicates good faith compliance with all applicable federal, state, and local laws and regulations for the protection of human health and the environment. Based on the information submitted on the earlier proposed rule and additional information submitted in response to this notice, EPA will take final action to grant or deny Ward Transformer's exemption petition.

EPA realizes that delaying final action on Ward Transformer's exemption petition will allow it to continue the activities for which it requested an exemption until EPA acts on the petition. In the interest of fairness or other similarly situated petitioners, whose exemption petitions are being granted or denied in the final PCB Exemptions Rule published elsewhere in this issue of the **Federal Register**, EPA intends to issue a final rule as soon as possible. If EPA does grant an exemption to Ward Transformer, EPA intends to make the exemption expire on the same date as the one-year exemption granted to other companies in the final PCB Exemptions Rule published elsewhere in this issue of the **Federal Register**.

VIII. Official Rulemaking Record

For the convenience of the public and EPA, all of the information originally submitted in docket number OPTS-66001 (manufacturing exemptions) and OPTS-66002 (processing and distribution in commerce exemptions) was consolidated into docket number OPTS-66008. Information and comments submitted in response to this proposed rule related notice will be filed in docket number OPTS-66008B.

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is publishing the following list of documents which constitutes the record of this rulemaking. A supplementary list or lists may be published any time on or before the date the final rule is issued. Public comment, the transcript of the rulemaking hearing, and submissions made at the rulemaking hearing or in connection with it are not listed, because these documents are exempt from **Federal Register** listing under section 19(a)(3). However, these documents are included in the public record, and a full list of these materials is available on request from EPA's

TSCA Assistance Office listed under
FOR FURTHER INFORMATION CONTACT.

A. Previous Rulemaking Records

(1) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Disposal and Marking Rule," Docket No. OPTS-66005, 43 FR 7150, February 17, 1978.

(2) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions Rule," 44 FR 31514, May 31 1979.

(3) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Proposed Rulemaking for PCB Manufacturing Exemptions," Docket No. OPTS-66001, 44 FR 31564, May 31, 1979.

(4) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment," Docket No. OPTS-62015, 47 FR 37342, August 25, 1982.

(5) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Closed and Controlled Waste Manufacturing Processes," Docket No. OPTS-62017, 47 FR 46980, October 21, 1982.

(6) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Amendment to Use Authorization for PCB Railroad Transformers," Docket No. OPTS-62020, 48 FR 124, January 3, 1983.

(7) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacture, Processing, Distribution in Commerce, and Use Prohibitions; Use in Microscopy and Research and Development," Docket No. OPTS-62031, 48 FR 52402, November 17, 1983.

B. Federal Register Notices

(8) 43 FR 50905, November 1, 1978, USEPA, "Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Polychlorinated Biphenyls (PCBs); Ban Exemption."

(9) 44 FR 108, January 2, 1979, USEPA, "Polychlorinated Biphenyls (PCBs); Policy for Implementation and Enforcement."

(10) 44 FR 31558, May 31, 1979, USEPA, "Procedures for Rulemaking Under section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Exemptions from the Polychlorinated Biphenyls (PCBs) Processing and Distribution in Commerce Prohibitions."

(11) 44 FR 31564, May 31, 1979, USEPA, "Polychlorinated Biphenyls (PCBs); Proposed Rulemaking for PCB Manufacturing Exemptions."

(12) 44 FR 42727, July 20, 1979, USEPA, "Proposed Rulemaking for Polychlorinated Biphenyls (PCBs); Manufacturing Exemptions; Notice of Receipt of Additional Manufacturing Petitions and Extension of Reply Comment Period."

(13) 45 FR 14247, March 5, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Statement of Policy on All Future Exemption Petitions."

(14) 45 FR 29115, May 1, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Expiration of the Open Border Policy for PCB Disposal."

(15) 48 FR 50486, November 1, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce Exemptions; Proposed Rule," Docket No. OPTS-66008.

(16) 48 FR 52402, November 17, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Microscopy and Research and Development; Proposed Rule," Docket No. OPTS-62031.

(17) 48 FR 55076, December 8, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Exclusions, Exemptions and Use Authorizations; Proposed Rule," Docket No. OPTS-62032.

C. Support Documents

(18) USEPA, OPTS, EED, Letter from Marigene H. Butler, Philadelphia Museum of Art, to Martin P. Halper, EPA, "Use of PCBs in Microscopy" (April 29, 1983).

(19) USEPA, OPTS, EED, Telephone Communication between Denise Keehner, EPA, and Martha Goodway, Smithsonian Institution, "Use of PCBs in Microscopy" (May 9, 1983).

(20) USEPA, OPTS, EED, "Response to Comments on the Proposed Uncontrolled PCB Rule" (June 1984).

(21) USEPA, OPTS, EED, "Response to Comments on the Proposed PCB Exemptions Rule" (June 1984).

(22) USEPA, OPTS, EED, "PCB Exemption Petitions Economic Impact Analysis" (Apr. 1984).

(23) USEPA, OPTS, HERD, "Response to Comments on Health Effects of PCBs" (August 19, 1982).

(24) USEPA, OPTS, "Support Document/Voluntary Environmental Impact Statement and PCB Manufacturing, Processing, Distribution in Commerce, and Use in Ban Regulation: Economic Impact Analysis" (Apr. 1979).

D. Reports

(25) USEPA, ORD, EMSL, "A Method for Sampling and Analysis of Polychlorinated Biphenyls (PCBs) in Ambient Air" (August 1978), EPA-600/4-78-048.

E. Other

(26) Manufacturing Exemption Petitions and Related Communications in Docket No. OPTS-66001.

(27) Processing and Distribution in Commerce Exemption Petitions and Related Communications in Docket No. OPTS-66002.

IX. 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 proposed rule related notice is not a "major rule" as that term is defined in section 1(b) of the Executive Order.

EPA has concluded that this proposed rule related notice is not a "major" rule under the criteria of section 1(b) because the annual effect on the economy will be considerably less than \$100 million; it will not cause any noticeable 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 with foreign enterprises in domestic or foreign markets. Indeed, this proposed rule related notice allows the continued manufacture, processing, and distribution in commerce of PCBs that would otherwise be prohibited by section 6(e)(3)(A) of TSCA for the petitioners who met the requirements of section 6(e)(3)(B) of TSCA and the Interim Procedural Rules for PCB Exemptions.

Although this proposed rule related notice is not a major rule, EPA has analyzed the economic impact using the guidance in the Executive Order to the extent possible. This proposed rule related notice was submitted to the Office of Management and Budget (OMB) for review prior to publication, as required by the Executive Order.

X. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (the Act), 5 U.S.C. 603, requires EPA to prepare and make available for comment an initial regulatory flexibility analysis in connection with any rulemaking for which EPA must publish a general

notice of proposed rulemaking. The initial regulatory flexibility analysis must describe the effect of a rule on small business entities.

Section 605(b) of the Act, however, provides that section 603 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."

EPA estimated the costs of denying Ward Transformer Co., Inc.'s petition for exemption to buy and sell used PCB-contaminated transformers. EPA estimated the incremental costs of denial to be \$160 for a used 46-gallon PCB-contaminated transformer. Ward Transformer stated that it sold 200 transformers in 1982 and 95 transformers in 1983. Assuming that granting an exemption would allow Ward Transformer to sell 150 PCB-contaminated transformers during a one-year exemption, EPA estimated the total costs of denial to be \$24,000.

EPA did not estimate the costs of denial for the 49 exemption petitions affected by the Uncontrolled PCB Rule. At this point, EPA cannot predict how many exemption petitions will be renewed and, if renewed, how many will be granted or denied. EPA will estimate the economic impact of denial

on small business entities after it receives any renewed petitions.

Therefore, in accordance with section 605(b) of the Act, I certify that a final rule, if promulgated, will not have a significant economic impact on a Substantial number of small entities. EPA solicits comments from petitioners and other interested persons concerning the economic impact of this proposed rule related notice on small business entities. In addition, EPA is sending a copy of this proposed rule related notice to the Chief Counsel for Advocacy of the Small Business Administration.

EPA further notes that section 606 of the Act states that the requirements of Section 603 do not alter in any manner standards otherwise applicable by law to agency action. In general, the manufacture, processing, and distribution in commerce of PCBs are prohibited by section 6(e)(3)(A) of TSCA and the PCB regulations, 40 CFR Part 761. Section 6(e)(3)(B) of TSCA permits EPA to grant exemptions from these prohibitions, if the Administrator finds that a petitioner has shown that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that it has made good faith efforts to develop substitutes for PCBs. Both small and large businesses must meet the same

statutory standard. Thus, even if EPA believed that it was an economically or socially desirable policy to grant an exemption to a small business, it could do so only if the small business met the requirements set forth in TSCA.

XI. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, authorizes the Director of OMB to review certain information collection requests by Federal agencies. EPA's original request to collect information for this rulemaking was approved by OMB and was assigned OMB Control Number 2000-0466. EPA's subsequent request to collect information for this rulemaking through December 31, 1984, was approved by OMB and was assigned OMB Control Number 2070-0021.

List of Subjects in 40 CFR Part 761

Hazardous materials, labeling, polychlorinated biphenyls, recordkeeping and reporting requirements, environmental protection. (Sec. 6, Pub. L. 94-469, 90 Stat. 2020 (15 U.S.C. 2605))

Dated: June 27, 1984.

Alvin L. Alm,

Acting Administrator.

[FR Doc. 84-17900 Filed 7-9-84; 8:45 am]

BILLING CODE 6560-50-M

34 CFR Part 298

Tuesday
July 10, 1984

Part III

**Department of
Education**

Office of Elementary and Secondary
Education

34 CFR Part 298
Chapter 2 of the Education
Consolidation and Improvement Act of
1981; Notice of Proposed Rulemaking

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 298

Chapter 2 of the Education Consolidation and Improvement Act of 1981

AGENCY: Education Department.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for activities authorized under Subchapters A, B, and C of Chapter 2 of the Education Consolidation and Improvement Act of 1981 (ECIA). These proposed regulations implement changes made to Chapter 2 by the Education Consolidation and Improvement Act of 1981 Technical Amendments to improve the administration of the program.

DATE: Comments must be received on or before August 24, 1984.

ADDRESS: Comments should be addressed to Mr. Allen King, Deputy Director, Division of Educational Support, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2006, FOB-6), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mr. Allen King, Telephone: (202) 245-7965.

SUPPLEMENTARY INFORMATION:

A. Overview of Chapter 2

Chapter 2 of the Education Consolidation and Improvement Act of 1981 (ECIA) was enacted as part of Subtitle D of Title V of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35). Chapter 2 consolidated over 40 education grant programs into a single authorization of grants to States for the same purposes as the antecedent programs, but to be used in accordance with the educational needs and priorities of State and local educational agencies (SEAs and LEAs) as determined by those agencies. The basic responsibility for the administration of Chapter 2 funds is in the SEAs. Responsibility for the design and implementation of Chapter 2 programs, however, is mainly that of LEAs, school superintendents and principals, and classroom teachers and supporting personnel. Final regulations implementing the provisions of Chapter 2 were published on November 19, 1982 in 47 FR 52368 as 34 CFR Part 298.

Overview of these proposed regulations

On December 8, 1983, Congress enacted the Education Consolidation and Improvement Act of 1981 Technical Amendments (Pub. L. 98-211) to improve the implementation of the ECIA. These proposed regulations implement changes made to Chapter 2 by Pub. L. 98-211. In particular, the Secretary proposes to amend the following sections of the Chapter 2 regulations in 34 CFR Part 298:

Section 298.3 General responsibilities of State and local educational agencies

This section implements three changes made by Pub. L. 98-211. First, paragraph (a)(2) implements section 9(b) of Pub. L. 98-211, which requires States to assure in their Chapter 2 applications that, apart from providing technical and advisory assistance and monitoring compliance with Chapter 2, an SEA has not exercised any influence in the decisionmaking processes of its LEAs concerning the LEAs' expenditures of Chapter 2 funds. Second, paragraph (b) incorporates the provision on State rulemaking contained in section 15 of Pub. L. 98-211. This proposed amendment replaces the prior authority for State rulemaking contained in § 298.3(a)(2). Third, paragraph (c)(2) implements section 9(c) of Pub. L. 98-211, which places responsibility on each LEA to ensure that each expenditure of funds under Chapter 2 is for the purpose of meeting the educational needs within the schools of the LEA.

Section 298.5 Allotments to States of Chapter 2 funds

Paragraph (a)(1) implements the change made by section 11 of Pub. L. 98-211, which requires the Secretary to reserve one percent of the Chapter 2 appropriation for payments to the Insular Areas.

Section 298.7 LEA applications

Paragraph (a) implements the requirement in section 13 of Pub. L. 98-211 that SEAs certify LEA applications.

Section 298.17 State audits

Paragraph (b)(2) implements section 12 of Pub. L. 98-211, which permits States to audit LEAs receiving less than an average of \$5,000 per year under Chapter 2 once every five years, rather than every two years as required by Section 1745 of the Omnibus Budget Reconciliation Act of 1981.

Section 298.51 Practice and procedure

Section 16 of Pub. L. 98-211 deletes the reference to a hearing "on the record" in section 592(a) of the ECIA. In so doing, Congress made clear that it did not intend the lengthy and time-

consuming hearing procedures required by the Administrative Procedure Act to apply to withholding hearings under the ECIA. Therefore, as the proposed change to § 298.51 indicates, practice and procedure before the Education Appeal Board for withholding hearings under the ECIA will be governed by the same rules that govern proceedings for the review of the final audit determinations or cease and desist complaints. These rules include the taking of a transcript of the proceedings. See 34 CFR 78.48.

C. Application of Other Statutes and Regulations

Public Law 98-211 makes several changes in the applicability of other statutes that affect Chapter 2. Section 18(a) of Pub. L. 98-211 amends section 596 of the ECIA to clarify the applicability of the General Education Provisions Act (GEPA) to Chapter 2. As amended, section 596 provides that, unless a section of GEPA is specifically excluded by section 596, the provisions in GEPA apply to Chapter 2. With two exceptions, the amendment to section 596 coincides with the Department's position on the applicability of GEPA published on November 19, 1982 at 47 FR 52370. The first exception concerns the applicability of section 425 of GEPA, which deals with appeal procedures at the State and Federal level available to an LEA that has been adversely affected by a decision of its SEA. The second exception concerns the applicability of section 437(b) of GEPA, which authorizes the Secretary and the Comptroller General of the United States to have access to records of recipients' funds for purposes of audit or program compliance. Public Law 98-211 makes sections 425 and 437(b) applicable to Chapter 2.

Section 18(b) of Pub. L. 98-211 repeals a portion of the "State Uses of Federal Funds" report required by section 406A(a) of GEPA. The repealed sections required States to collect and furnish information on the amount of Federal funds received by each LEA, the purposes for which these funds were spent, and the individuals served by these activities, all tabulated with respect to the second preceding year.

According to section 596 of the ECIA, sections 434, 435, and 436 of GEPA are not applicable to Chapter 2 "except to the extent that such sections relate to fiscal control and fund accounting procedures. . . ." The Secretary indicated in the preamble of the Chapter 2 regulations that the provision in section 434 that applies to Chapter 2 is subsection (a)(2) pertaining to the

Secretary's discretionary authority to request a plan on audits. The Secretary decided not to require such a plan for audits of the Chapter 2 program. See 47 FR 52370 (November 19, 1982). Upon further consideration in conjunction with the review of GEPA applicability in Pub. L. 98-211, the Secretary has determined that sections 434(b) (2) and (3) relating to SEA suspension and withholding of payments to LEAs that have failed to comply with Federal program requirements also deal with fiscal control and fund accounting procedures and are therefore applicable to Chapter 2.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. To the extent that these regulations affect States and State agencies, they will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These regulations will affect all small LEAs receiving Federal financial assistance under Chapter 2. However, the regulations will not have a significant economic impact on the LEAs affected. The regulations implement technical amendments enacted by Congress and impose minimal requirements to ensure the proper allocation and expenditure of Chapter 2 funds. Some provisions of the regulations may reduce burdens and increase flexibility for LEAs.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address given at the beginning of this preamble. All comments received on or before August 24, 1984 will be considered in developing the final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 2006, FOB-6, 400 Maryland Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday

through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 298

Administrative practice and procedure, Education, Elementary and secondary education, Grant programs—education, Private schools, State administered programs.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations. Unless otherwise noted, the citations refer to sections of the Education Consolidation and Improvement Act of 1981.

(Catalog of Federal Domestic Assistance No. 84.151, Chapter 2 of the Education Consolidation and Improvement Act of 1981)

Dated: July 3, 1984.

T. H. Bell,

Secretary of Education.

The Secretary amends Part 298 of Title 34 of the Code of Federal Regulations as follows:

PART 298—ACTIVITIES UNDER CHAPTER 2 OF THE EDUCATION CONSOLIDATION AND IMPROVEMENT ACT OF 1981

1. Section 298.3 is revised to read as follows:

§ 298.3 General responsibilities of State and local educational agencies.

(a) *State educational agencies.* (1) Except as provided in paragraph (a)(2) of this section, a State educational agency (SEA)—

(i) Has the basic responsibility for the administration of funds made available under Chapter 2; and

(ii) Is the State agency responsible for the administration and supervision of programs assisted with Chapter 2 funds.

(2) Apart from providing technical and advisory assistance and monitoring compliance with Chapter 2, an SEA may not exercise any influence in the decisionmaking process of a local educational agency (LEA) concerning the expenditures described in the LEA's application under section 566 of Chapter 2.

(b) *State rulemaking.* (1) Chapter 2 does not—

(i) Authorize States to issue regulations that apply to LEAs operating programs or projects funded under Chapter 2, except as related to State audits and financial responsibilities; or

(ii) Encourage, preempt, or prohibit regulations issued under State law.

(2) If a State adopts rules, regulations, or policies relating to the administration and operation of programs funded under Chapter 2 (including those based on State interpretation of any Federal statute, regulation, or guideline), the State shall—

(i) Ensure that the rules, regulations, or policies are not in conflict with the provisions of—

(A) Chapter 2;

(B) The regulations in this part; or

(C) Other applicable Federal statutes and regulations.

(3) If a State adopts rules, regulations, or policies relating to the administration and operation of programs funded under Chapter 2 (including those based on State interpretation of any Federal law, regulation, or guideline), the State shall identify the rule, regulation, or policy as a State-imposed requirement.

(c) *Local educational agencies.* (1) Section 566(c) of Chapter 2 provides that each LEA has complete discretion, subject only to the provisions of Chapter 2, in determining how funds the agency receives under section 565(a) of Chapter 2 are distributed among the purposes of Chapter 2 in accordance with the LEA's Chapter 2 application.

(2) In exercising this discretion, an LEA shall ensure that each expenditure of Chapter 2 funds is for the purpose of meeting the educational needs within the schools of that LEA.

(Sec. 561(b), 20 U.S.C. 3811(b); sec. 564(a), 20 U.S.C. 3814(a), as amended by sec. 9(b) of Pub. L. 98-211; sec. 566(c), 20 U.S.C. 3816(c), as amended by sec. 9(c) of Pub. L. 98-211; sec. 591(d), 20 U.S.C. 3871(d), added by sec. 15 of Pub. L. 98-211)

2. Section 298.5 is amended by revising paragraph (a)(1) to read as follows:

§ 298.5 Allotments to States of Chapter 2 funds.

(a) * * *

(1) Reserves one percent of the Chapter 2 appropriation for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands to be allotted in accordance with their respective needs. If no more reliable data are available, the Secretary determines respective needs according to the relative enrollments in public and private schools within each territory;

(Sec. 563, 20 U.S.C. 3813, as amended by sec. 11 of Pub. L. 98-211)

3. Section 298.7 is amended by revising paragraph (a) to read as follows:

§ 298.7 LEA applications.

(a) An LEA may receive its allocation of funds under Chapter 2 for any year

for which its application to the SEA has been certified to meet the requirements in section 566(a) of Chapter 2.

(Sec. 566, 20 U.S.C. 3816, as amended by sec. 13 of Pub. L. 98-211)

4. Section 298.17 is amended by revising paragraph (b) to read as follows:

§ 298.17 State audits.

(b) *Frequency of audit.* (1) Except as provided in paragraph (b)(2) of this section, a State shall conduct the audits required by paragraph (a) of this section every two years. The first two-year period begins on July 1, 1982.

(2) A State does not need to audit LEAs that receive less than an average

of \$5,000 per year under Chapter 2 more frequently than once every five years.

(Sec. 1745 31 U.S.C. 1243 note; sec. 564(c), 20 U.S.C. 3814(c), added by sec. 12 of Pub. L. 98-211)

5. Section 298.51 is revised to read as follows:

§ 298.51 Practice and procedure.

Practice and procedure before the Board in a proceeding for review of a final audit determination, an intent to withhold funds, or a cease and desist complaint are governed by the rules in Subpart E of 34 CFR Part 78 (Education Appeal Board).

(Sec. 592(a), 20 U.S.C. 3872(a), as amended by sec. 16 of Pub. L. 98-211; sec. 451(e) of GEPA, 20 U.S.C. 1234(e))

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