

(e) Byproduct material as defined in AEA section 11(e)(2).

12. Siting, construction, operation of incinerators, other than research and development incinerators or incinerators for nonhazardous solid waste (as designated in 40 CFR 261.4(b)).

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November 2, 1990

Part VI

Department of Labor

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

**29 CFR Part 522
Employment of Learners; Final Rule**

DEPARTMENT OF LABOR

Employment Standards
Administration, Wage and Hour
Division

29 CFR Part 522

Employment of Learners

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Fair Labor Standards Act (FLSA) permits the employment of certain inexperienced workers (learners) at wage rates below the statutory minimum under certificates issued by the Department of Labor. Amendments to the FLSA were enacted in 1989 which, among other things, increased the statutory minimum wage from \$3.35 an hour to \$3.80 an hour effective April 1, 1990, and to \$4.25 an hour effective April 1, 1991. It is necessary to increase the wage rates contained in the regulations which govern the employment of learners at less than the minimum wage to reflect the increases in the statutory minimum wage rate.

EFFECTIVE DATE: This rule is effective November 2, 1990.

FOR FURTHER INFORMATION CONTACT: Samuel D. Walker, Acting Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW., Washington, DC 20210, (202) 523-8305. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:**I. Background**

Section 14(a) of the FLSA (29 U.S.C. 214(a)) authorizes the Secretary of Labor, to the extent necessary to prevent curtailment of opportunities for employment, to provide for the employment of learners at wage rates lower than the minimum wage applicable under section 6 of the FLSA. Such employment is permitted only under certificates which are issued pursuant to regulations or orders of the Secretary. These regulations, 29 CFR part 522, contain, among other provisions, those wage rates which are less than the applicable minimum contained in section 6 of the FLSA and at which learners in certain occupations in certain industries may be employed. These wage rates have historically varied from 15 to 2½ cents below the statutory minimum wage.

On November 17, 1989, the 1989 Amendments to FLSA (Pub. L. 101-157) were enacted. These Amendments provide, in part, that the statutory

minimum wage required under section 6(a)(1) of FLSA increases to \$3.80 an hour effective April 1, 1990, and to \$4.25 an hour effective April 1, 1991. It is necessary to amend §§ 522.24, 522.35, 522.43, 522.65, and 522.85 of Regulations, 29 CFR part 522, to reflect the increase in the statutory minimum wage rate.

II. Paperwork Reduction Act

The rule imposes no reporting or recordkeeping requirements on the public.

III. Summary of Rule

The wage rates specified for certain occupations in certain industries contained in §§ 522.24, 522.35, 522.43, 522.65, and 522.85 of Regulations, 29 CFR part 522, are increased by 45 cents effective November 2, 1990, and by 45 cents effective April 1, 1991, to reflect increases in the statutory minimum wage contained in the 1989 Amendments to FLSA. These wage rates traditionally vary from 15 to 2½ cents below the statutory minimum wage.

Executive Order 12291

This rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b) the requirements of the Regulatory Flexibility Act, Public Law 96-354, 94 Stat. 1165, 5 U.S.C. 601 *et seq.*, pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2).

Administrative Procedure Act

The Secretary has determined that the public interest requires the immediate issuance of these regulations in order to reflect the 1989 Amendments, as these Amendments relate to the employment of learners under Regulations, 29 CFR part 522. Insufficient time existed between the enactment of the Amendments and the effective date of the first increase in the minimum wage rate of April 1, 1990, for the Department of Labor (the Department) to issue a

proposal for comments, review the comments, and promulgate a final rule.

Accordingly, the Secretary, for good cause, finds, pursuant to 5 U.S.C. 553(b)(3)(B), that prior notice and public comment are impracticable and contrary to the public interest.

The Secretary also for good cause finds, pursuant to 5 U.S.C. 553(d)(3), that this rule cannot be published 30 days before its effective date.

This document was prepared under the direction and control of Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 522

Employment, Labor, Law enforcement, Learners.

For the reasons set forth above, 29 CFR part 522 is amended as set forth below.

Signed at Washington, DC, on this 30th day of October, 1990.

Samuel D. Walker,
Acting Administrator, Wage and Hour Division.

Accordingly, title 29 chapter V, subchapter A, of the Code of Federal Regulations is amended as follows:

PART 522—EMPLOYMENT OF LEARNERS

Part 522 is amended to read as follows:

1. The authority citation for part 522 is revised to read as set forth below and the authority citations following all of the sections in part 522 are removed.

Authority: Secs. 14, 52 Stat. 1062, 1064 (29 U.S.C. 214); secs. 2-12, 60 Stat. 237-244; (5 U.S.C. 1001-1011).

§ 522.24 [Amended]

2. In § 522.24, paragraphs (a), (b), (c), and (d) are revised to read as follows:

(a) The special minimum wage rates of learners employed in occupations for which a 320-hour period is authorized under § 522.23(a) shall during that period be not less than \$3.20 an hour through November 2, 1990; not less than \$3.65 an hour through March 31, 1991; and not less than \$4.10 an hour thereafter.

(b) The rates for experienced workers in any one of the occupations shown in § 522.23(a) for which a 320-hour learning period is authorized, who are being retrained under the terms of a learner certificate in any other occupation shown in that paragraph having such a 320-hour maximum period, shall not be less than \$3.20 an hour for the first 160 hours and not less than \$3.25 an hour for

the remaining 160 hours through November 2, 1990; not less than \$3.65 an hour for the first 160 hours and not less than \$3.70 an hour for the remaining 160 hours through March 31, 1991; and not less than \$4.10 an hour for the first 160 hours and not less than \$4.15 an hour for the remaining 160 hours thereafter.

(c) The rates for learners employed in the occupation of final inspection of assembled garments under § 522.23(b) shall be not less than \$3.25 and hour during the authorized 160-hour learning period through November 2, 1990; not less than \$3.70 an hour during such authorized learning period through March 31, 1991; and not less than \$4.15 an hour during such authorized learning period thereafter.

(d) The rates for learners employed in any occupation, other than final inspection of assembled garments, for which a 160-hour learning period is authorized in § 522.23 (a) or (b) shall be not less than \$3.20 an hour through November 2, 1990; not less than \$3.65 an hour through March 31, 1991; and, not less than \$4.10 and hour thereafter.

* * *

§ 522.35 [Amended]

3. In § 522.35, paragraph (a) is revised to read as follows:

(a) The special minimum rate which may be authorized in special certificates issued in the knitted wear industry shall be not less than \$3.25 and hour through November 2, 1990; not less than \$3.70 an hour through March 31, 1991; and, not less than \$4.15 an hour thereafter.

* * *

§ 522.43 [Amended]

4. In § 522.43, paragraphs (a) and (d) are revised to read as follows:

(a) A person who has had no previous experience in any of the following occupations in the hosiery industry may be employed as a learner in any of the occupations for the maximum number of hours and at the special rates set out in paragraphs (a) (1) through (9) of this section.

(1) In the seamless branch, knitting (transfer top only) and looping, for 960 hours, at not less than \$3.20 an hour for the first 480 hours and at not less than \$3.275 for the remaining 480 hours through November 2, 1990; not less than \$3.65 an hour for the first 480 hours and not less than \$3.725 for the remaining 480 hours through March 31, 1991; and not less than \$4.10 an hour for the first 480 hours and not less than \$4.175 for the remaining 480 hours thereafter.

(2) In the seamless branch, pairing (women's nylon) and mending (women's nylon), for 720 hours at not less than \$3.20 an hour for the first 360 hours and

at not less than \$3.275 an hour for the remaining 360 hours through November 2, 1990; not less than \$3.65 an hour for the first 360 hours and not less than \$3.725 an hour for the remaining 360 hours through March 31, 1991; and not less than \$4.10 an hour for the first 360 hours and not less than \$4.175 an hour for the remaining 360 hours thereafter.

(3) In the seamless branch, topping, wetting, and mending (other than women's nylon), for 480 hours at not less than \$3.20 an hour through November 2, 1990; not less than \$3.65 an hour through March 31, 1991; and, not less than \$4.10 an hour thereafter.

(4) In the seamless branch, boarding (women's nylon), folding (women's nylon and rayon) and pairing (other than women's nylon), for 360 hours, at not less than \$3.20 an hour through November 2, 1990; not less than \$3.65 and hour through March 31, 1991; and not less than \$4.10 an hour thereafter.

(5) In the seamless branch, knitting (except transfer top), seaming, examining and inspection, folding (other than women's nylon and rayon), and boarding (other than women's nylon), for 240 hours, at not less than \$3.20 an hour through November 2, 1990; at not less than \$3.65 an hour through March 31, 1991; and not less than \$4.10 an hour thereafter.

(6) In the full-fashioned branch, seaming (leg and foot), for 960 hours, at not less than \$3.25 an hour for the first 480 hours and \$3.325 an hour for the remaining 480 hours through November 2, 1990; at not less than \$3.70 an hour for the first 480 hours and \$3.775 an hour for the remaining 480 hours through March 31, 1991; and, at not less than \$4.15 an hour for the first 480 hours and at not less than \$4.225 an hour for the remaining 480 hours thereafter.

(7) In the full-fashioned branch, pairing and mending, for 720 hours at not less than \$3.25 an hour for the first 360 hours and not less than \$3.325 an hour for the remaining 360 hours through November 2, 1990; at not less than \$3.70 an hour for the first 360 hours and at not less than \$3.775 an hour for the remaining 360 hours through March 31, 1991; and, at not less than \$4.15 an hour for the first 360 hours and at not less than \$4.225 an hour for the remaining 360 hours thereafter.

(8) In the full-fashioned branch, boarding and folding for 360 hours, at not less than \$3.25 an hour through November 2, 1990; at not less than \$3.70 an hour through March 31, 1991, and, at not less than \$4.15 an hour thereafter.

(9) In the full-fashioned branch, examining and inspecting, and seaming (sewing-other than leg and foot), for 240 hours at not less than \$3.25 an hour

through November 2, 1990; at not less than \$3.70 and hour through March 31, 1991; and, at not less than \$4.15 an hour thereafter.

* * *

(d) A worker who has had full training in any authorized learner occupation may be transferred to any other learner occupation for a period not to exceed one-half of the learning period authorized for the occupation at not less than \$3.275 an hour in the seamless branch and at not less than \$3.325 an hour in the full-fashioned branch through November 2, 1990; at not less than \$3.725 an hour in the seamless branch and at not less than \$3.775 an hour in the full-fashioned branch through March 31, 1991; and at not less than \$4.175 an hour in the seamless branch and at not less than \$4.225 an hour in the full-fashioned branch thereafter. A worker who has partial training in any authorized learner occupation may be transferred to any other learner occupation for either: (1) A period not to exceed one-half of the learning period authorized for that occupation, at not less than \$3.275 an hour in the seamless branch and at not less than \$3.325 an hour in the full-fashioned branch through November 2, 1990; at not less than \$3.725 an hour in the seamless branch and at not less than \$3.775 an hour in the full-fashioned branch through March 31, 1991; and, at not less than \$4.175 an hour in the seamless branch and at not less than \$4.225 an hour in the full-fashioned branch thereafter; or, (2) the balance of the number of hours permitted as a learning period for the occupation to which the learner is being transferred, at the applicable special minimum rates set for in paragraph (a) of this section: *Provided, however,* That (i) no worker may be employed as a learner at learner rates in more than two authorized occupations; (ii) no worker who has completed the authorized learning period in the occupation of pairing may be employed as a learner at learner rates in the occupation of folding or inspection; and, (iii) no worker who has completed the authorized learning period may be employed as a learner at learner rates when transferring from the seamless branch of the hosiery industry to the full-fashioned branch or from the full-fashioned branch to the seamless branch, if the worker is employed in the same occupation as that in which the worker has been previously employed.

§ 522.65 [Amended]

5. In § 522.65, paragraph (a) is revised to read as follows:

(a) The special minimum wage rates which may be authorized in special certificates issued in the glove industry shall be as follows: (1) In the leather glove, woven or knit fabric glove, and knitted glove branches of the industry, not less than \$3.20 an hour for the first 320 hours and at not less than \$3.30 an hour for the remaining 160 hours through November 2, 1990; at not less than \$3.65 an hour for the first 320 hours and at not less than \$3.75 an hour for the remaining 160 hours through March 31, 1991; and, at not less \$4.10 an hour for the first 320 hours and not less than \$4.20 an hour for the remaining 160 hours thereafter. (2) In the work glove branch of the industry, not less than \$3.20 an hour for the first 320 hours and not less than \$3.25 an hour for the remaining 160 hours through November 2, 1990; at not less than \$3.65 an hour for the first 320 hours and not less than \$3.70 an hour for the remaining 160 hours through March 31, 1991; and,

at not less than \$4.10 an hour for the first 320 hours and not less than \$4.15 an hour for the remaining 160 hours.
* * * * *

§ 522.85 [Amended]

6. In § 522.85, paragraph (a) is revised to read as follows:

(a) The special minimum wage rates which may be authorized in special certificates issued in the cigar industry shall be as follows: (1) In the occupations of cigar machine operating and cigar packing, not less than \$3.20 an hour through November 2, 1990; not less than \$3.65 an hour through March 31, 1991; and, not less than \$4.10 an hour thereafter. (2) In the occupations of hand rolling and hand bunch making, not less than \$3.20 an hour for the first 480 hours and \$3.275 an hour for the second 480 hours through November 2, 1990; at not less than \$3.65 an hour for the first 480 hours and \$3.725 an hour for the second

480 hours through March 31, 1991; and, at not less than \$4.10 an hour for the first 480 hours and \$4.175 an hour for the second 480 hours thereafter. (3) In the occupation of hand making Italian Stogies, not less than \$3.20 an hour for the first 320 hours and \$3.275 an hour for the second 320 hours through November 2, 1990; not less than \$3.65 an hour for the first 320 hours and \$3.725 an hour for the second 320 hours through March 31, 1991; and, not less than \$4.10 an hour for the first 320 hours and \$4.175 an hour for the second 320 hours thereafter. (4) In the occupations of hand stripping and machine stripping, not less than \$3.20 an hour through November 2, 1990; not less than \$3.65 an hour through March 31, 1991; and, not less than \$4.10 an hour thereafter.
* * * * *

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Environmental Protection Agency

Friday
November 2, 1990

Part VII

Environmental Protection Agency

40 CFR Parts 22 and 761
Polychlorinated Biphenyls; Criteria and
Procedures for Terminating Storage and
Disposal Approvals; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 22 and 761

[OPTS-62065; FRL 3668-3]

RIN 2070-AB81

Polychlorinated Biphenyls; Criteria and Procedures for Terminating Storage and Disposal Approvals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing amendments to its storage and disposal rules for polychlorinated biphenyls (PCBs) (40 CFR part 761, subpart D). EPA is also proposing amendments to its Consolidated Rules of Practice at 40 CFR part 22, which govern the conduct of formal adjudicatory proceedings arising out of enforcement actions under the Toxic Substances Control Act (TSCA). This document proposes criteria and procedures that will govern the suspension and revocation of PCB storage and disposal approvals. These criteria and procedures are proposed under authority of section 6(e)(1) of TSCA, 15 U.S.C. 2605(e), which authorizes EPA to promulgate rules prescribing methods of disposal for PCBs.

DATES: Written comments must be received by December 17, 1990. If persons request time for oral comment, EPA will hold an informal hearing in Washington, DC, on January 8, 1991. The exact time and location of the hearing can be obtained by telephoning the Environmental Assistance Division at the telephone number listed under FOR FURTHER INFORMATION CONTACT. Written requests to participate in the informal hearing must be received by the Environmental Assistance Division or postmarked not later than December 17, 1990.

ADDRESSES: Submit written comments, in triplicate, marked with the document control number OPTS 62065, by mail to: TSCA Docket Office, (TS-793), Rm. NE-G004, Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record.

Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. EPA does not anticipate that any persons will need to submit CBI to comment effectively on this proposed rule. All written comments, except for those claimed confidential, will be available for public inspection and copying in Rm. NE-G004, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Rm. E-543B, Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202 554-1404). TDD: (202 554-0551).

SUPPLEMENTARY INFORMATION:

I. Authority

This proposed rule is issued under the authority of section 6(e)(1) of TSCA. Section 6(e)(1)(A) gives EPA the authority to promulgate rules prescribing the methods for disposal of PCBs (15 U.S.C. 2605(e)(1)(A)). Consistent with this authority, EPA has promulgated rules at 40 CFR 761.60 et seq. requiring persons who own or operate disposal facilities to obtain approvals from EPA. EPA has also published rules requiring commercial storers of PCB wastes to obtain approvals for their storage activities. (See 54 FR 52716, Dec. 21, 1989.) EPA now proposes procedures for suspending and revoking these approvals and the criteria that will trigger such actions.

II. Background

A. Purpose of this Proposed Rule

The purpose of this proposed rule is to set out criteria and procedures for suspending and revoking PCB storage and disposal approvals. For purposes of this proposed rule, suspension refers to the immediate shutting down of a facility's PCB operations when EPA determines that further operation of the facility may present an immediate risk. Revocation refers to final termination of a facility's approval to operate. A person whose approval has been revoked by EPA must reapply for an approval to recommence operations.

Current EPA rules require persons operating PCB disposal facilities to obtain an approval for such activity. These rules do not, however, prescribe when or how such approvals may be suspended or revoked. EPA has also published rules at [54 FR 52716] which require commercial storers of PCB wastes to obtain approvals.

The purpose of this proposed rule is to announce the basic criteria and procedures which EPA's regional and Headquarters permitting offices will use when suspending and revoking PCB approvals they issue. EPA may also establish conditions in specific approvals that describe when suspension and revocation will occur, so long as these more specific conditions fall within the basic criteria set forth in this proposed rule.

EPA is proposing standard procedures for suspending or revoking PCB storage and disposal approvals to ensure consistency and clarity nationwide. For purposes of this rulemaking, the terms "licenses", "permits", and "approvals" are equivalent. The procedural and substantive standards proposed for suspension and revocation of approvals provide adequate notice and an opportunity to respond to EPA's actions and therefore comply with the applicable constitutional and Administrative Procedure Act (APA) requirements. These standards are also consistent with Executive Order 12630.

For convenience, throughout the preamble of this proposed rule, the term "EPA" is used to mean either the Administrator or a designee, the Administrator of the Regional Office, the Assistant Administrator, Office of Pesticides and Toxic Substances, or the Director, Exposure Evaluation Division. The proposed codified language defines more specifically which office is responsible for the stated activity.

This proposed rule is not intended to limit EPA's discretion in suspending or revoking approvals. Furthermore, EPA assumes no obligation to suspend or revoke approvals. EPA retains complete discretion in choosing whether to exercise its authority within the bounds of this rule. This rule is not intended to restrict EPA's authority or discretion to take any other enforcement action under sections 6, 7, 16, or 17 of TSCA.

B. Statutory Authority

Section 6(e)(1) of TSCA confers broad authority upon the EPA to issue rules that prescribe the methods for disposal of PCBs. EPA first exercised its disposal authority for PCBs by issuing PCB storage, marking, and disposal requirements in a rule published in the *Federal Register* of February 17, 1978 (43 FR 7150). This rule, "The Disposal and Marking Rule," was amended in part and recodified in a rule which EPA issued in the *Federal Register* of May 31, 1979 (44 FR 31542).

The existing PCB disposal rules at 40 CFR 761.60 et seq. prescribe specific disposal options for defined classes of

PCB wastes contaminated with PCBs at a level of 50 parts per million (ppm) or greater. The PCB wastes regulated for disposal under TSCA must generally be disposed of in facilities approved by EPA for the disposal of PCBs. Provisions in the PCB disposal rules describe the administrative process by which persons may obtain approvals for various types of PCB disposal processes, including high-temperature incinerators, high-efficiency boilers, chemical waste landfills, and alternative methods of disposal. The current rules, however, provide no specific guidance on suspending or revoking these approvals. Also, under TSCA section 6(e)(1), EPA has published rules which require commercial storers of PCB wastes to obtain approvals from EPA (54 FR 52716,

December 21, 1989). These requirements became effective February 5, 1990, and the procedures and criteria proposed in this rule apply to the suspension and revocation of these approvals as well.

III. Discussion of This Proposed Rule

A. Overview

This document proposes criteria for making decisions to suspend and revoke PCB storage and disposal approvals. This proposal defines the standards for:

(1) Commencement of revocation proceedings and issuance of revocation orders after notice to the affected facility and an opportunity to correct the violations.

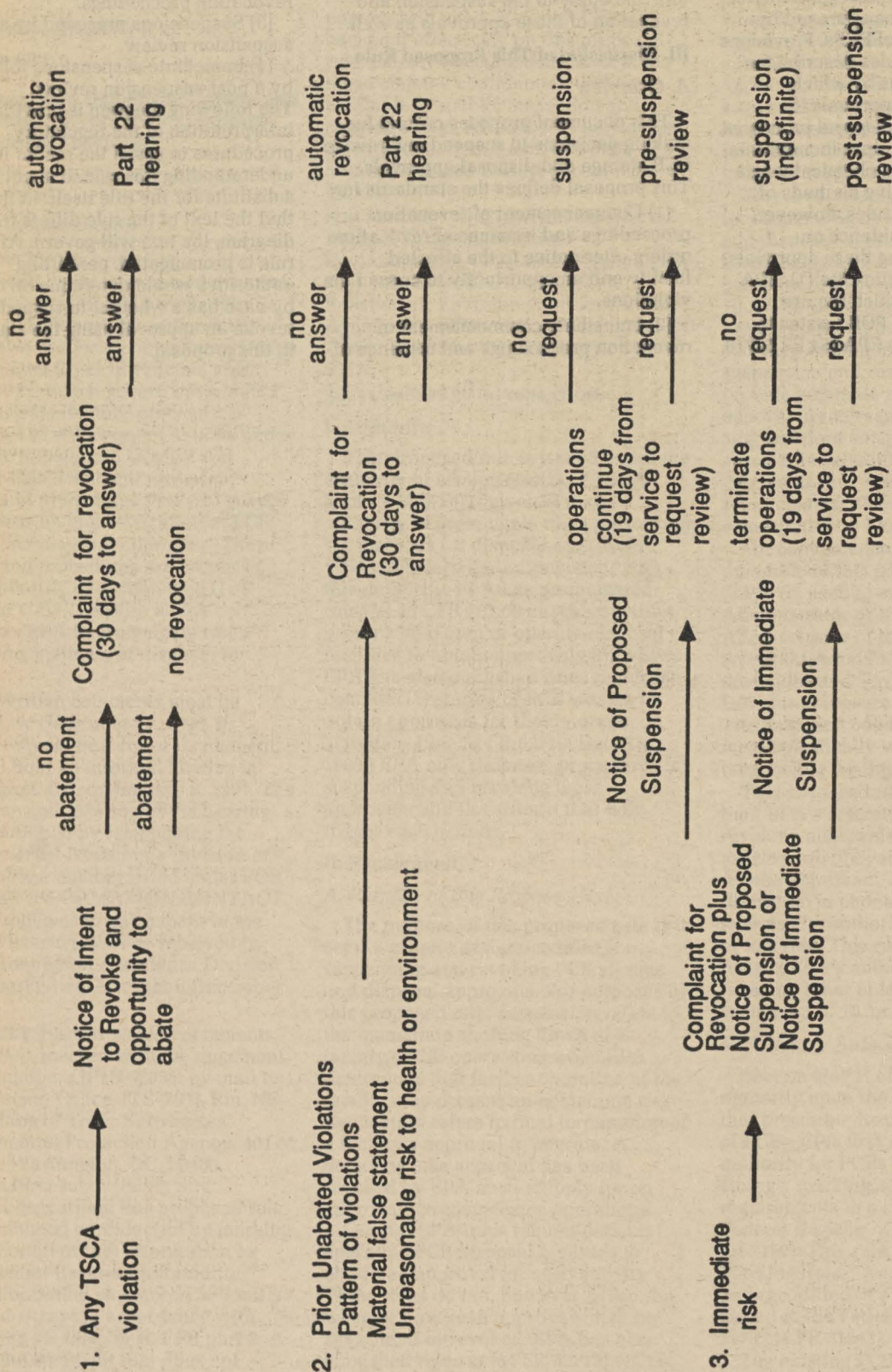
(2) Immediate commencement of revocation proceedings and issuance of

revocation orders under 40 CFR part 22 without notice and opportunity to correct violations prior to initiation of revocation proceedings.

(3) Suspensions preceded by a pre-suspension review.

(4) Immediate suspensions followed by a post-suspension review. The following diagram is provided as an interpretation of the regulatory procedures to assist the reader in understanding this rule. It is not a substitute for the rule itself. In the event that the text of the rule differs from the diagram, the text will govern. After this rule is promulgated, permitting authorities would determine on a case-by-case basis whether to suspend or revoke an approval using the standards in this proposal.

REVOCAION AND SUSPENSION PROCEDURES



Note: This diagram is intended merely as an overview of the procedures contained in this proposed rule and does not include all procedural mechanisms provided for in the text. Where this diagram differs from the text of this proposal, the text will govern.

1. *Revocation actions.* Under these rules, EPA would formally commence revocation proceedings by filing a Complaint for Revocation under 40 CFR 22.33(d). The filing of such a complaint initiates the formal administrative process which may conclude with a final Agency decision to revoke a PCB storage or disposal approval. In the typical revocation action (see Unit III.B.1. of this preamble), EPA would provide the owner or operator of the facility with a written Notice of Intent to Revoke prior to commencing the formal revocation proceedings. The Notice of Intent to Revoke would include a written warning notice (with subsequent opportunity to demonstrate or achieve compliance) prior to the initiation of proceedings to revoke an approval.

In exceptional circumstances, EPA would dispense with the Notice of Intent to Revoke and immediately file a Complaint for Revocation (see Unit III.B.2. of this preamble). When a revocation proceeding is commenced, the operations of the facility would not be curtailed, unless there is a concern for immediate risks, until after EPA has made a final decision on the record to revoke the facility's approval.

2. *Suspension actions.* There may be situations where the continued operation of the facility during the revocation process may pose an immediate risk to health or the environment. In such cases, EPA may take immediate action to terminate a facility's operations pending the conduct of the formal revocation proceedings. The circumstances under which EPA would take action to quickly shut down a facility's operations are described in Unit III.C.1. of this preamble, which discusses the "immediate risks" which justify the suspension of operations. The suspension of operations action would typically be used to supplement formal revocation procedures in those cases where, due to the immediacy of the risk to health or the environment, the facility's operations should not be allowed to continue pending the resolution of the formal hearing process pursuant to 40 CFR part 22.

B. Criteria for Revoking Approvals

EPA will initiate action to revoke PCB storage and disposal approvals when it has reason to believe that the permitted facility should no longer be in the business of storing or disposing of PCBs. EPA may reach this preliminary conclusion because of violations of TSCA or the PCB rules by the permitted party, violations of approval conditions, conditions at the facility which pose unreasonable risks, or material misrepresentations of fact in an

application for approval. In most situations, EPA's action to initiate revocation will be preceded by a warning notice and an opportunity to come into compliance. In other situations this will not be the case.

1. *Violations justifying commencement of revocation proceedings following warning notice.* EPA proposes that it have the option of issuing a Notice of Intent To Revoke prior to commencing revocation proceedings for any violation of TSCA, requirements of 40 CFR part 761, or an approval issued under the TSCA. EPA believes that persons who violate applicable requirements, or who are technically incapable of meeting those requirements, are not entitled to the privilege of operating a facility with an EPA approval.

The notice would apprise the affected party of the intent to revoke and the violations that are the basis for the action. The permittee would then have an opportunity to remedy the violations prior to issuance of a complaint.

2. *Expedited commencement of revocation proceedings under 40 CFR part 22.* In certain cases, EPA proposes to commence revocation proceedings without giving advance notice to the affected facility or providing an opportunity for the facility to correct violations of the applicable requirements. EPA intends to use those expedited revocation procedures in cases where there are unabated violations, a material false statement in an application for approval, a pattern of violations, or other conditions at the facility that pose an unreasonable risk to health or the environment. In each case, the cited conduct is attended by an element of willfulness or an unreasonable risk to health or the environment, which justifies dispensing with a prior written warning. In these cases, the subsequent abatement of the violation need not cause EPA to withdraw a Complaint for Revocation, or prevent EPA from ultimately revoking the approval. Absent grounds for a suspension (Unit III.C. of this preamble), the facility may continue operating during the course of the revocation proceeding.

a. *Prior unabated violations.* A permittee who has previously received a Notice of Intent To Revoke and has failed to remedy the violations within the time allotted in the notice is presumed to be willfully violating the applicable requirements. Therefore, EPA may commence revocation proceedings under 40 CFR part 22 when the deadline in the notice for abatement of the

violation has passed. A second warning is not required.

In some cases, an unabated violation at a facility could also result in a situation that requires immediate action. For example, a facility which is storing wastes beyond the period authorized in the rules or continues to accept additional wastes for disposal without correcting the violation may constitute an immediate risk justifying issuance of a Notice of Proposed Suspension or a Notice of Immediate Suspension. Immediate risk is discussed in Unit III.C.1. of this preamble. The suspension remedy would be pursued in addition to the revocation remedy.

b. *Material false statements.* EPA proposes to commence a revocation proceeding under 40 CFR part 22 without advance notice when it finds that a permittee made a material false statement in the application for an approval. A false statement will be deemed material under the proposed rule if, for example, a truthful version of that statement would have warranted a denial of the original approval application. Making a material false statement in one's application for approval is presumed to be a willful violation justifying issuance of a Complaint for Revocation without prior notice. In some cases, EPA may also find that a material misrepresentation is so serious that it results in an immediate risk to health or the environment, justifying issuance of a Notice of Proposed Suspension or a Notice of Immediate Suspension.

c. *Pattern of violations.* The proposed rule provides that when a pattern of violations is caused by the failure of the permittee to comply with applicable requirements, EPA may immediately commence revocation proceedings, without providing advance notice and an opportunity to correct the violations. When such a pattern exists, EPA will presume that the violations are willful.

The rule proposes that EPA may determine that a pattern of violations exists or has existed after considering the total circumstances, which include, but are not limited to, the citation on three or more occasions of violations of any requirement of TSCA, any requirements of part 761, or any approval conditions. At least one of these cited violations must be of a requirement in part 761. EPA may also consider any other evidence of a pattern of violations.

Examples of situations in which EPA may find a pattern of violations constituting grounds for immediate commencement of revocation proceedings under 40 CFR part 22

include, but are not limited to the following:

i. EPA performs several inspections of a facility holding a storage and disposal approval. On each inspection, EPA determines that the facility is storing wastes in excess of the 1-year limit. EPA may find a pattern of violations and proceed to revoke the approval under 40 CFR part 22, without issuing a prior warning.

ii. EPA inspects a permitted TSCA landfill and finds that it is failing to monitor its leachate collection system. On the next inspection of the facility, EPA finds that the fence that is required to surround the facility has fallen down so that persons and animals have easy access to the facility. On the third inspection, the inspector discovers a worker placing ignitable wastes in the landfill. EPA may find a pattern of violations and proceed to revoke the approval under 40 CFR part 22.

iii. A mobile incinerator fails on several different occasions to provide notice of commencement of operations as required by the terms of its approval. EPA may find a pattern of violations and proceed to revoke the approval under 40 CFR part 22.

In cases where the pattern of violations also constitutes an immediate risk, EPA may also issue a Notice of Proposed Suspension or a Notice of Immediate Suspension as appropriate; see the discussion at Unit III.D.3.a. and b. of this preamble.

d. *Unreasonable risk to health or the environment.* If EPA determines that the continued operation of a facility may pose an unreasonable risk to health or the environment, EPA may commence proceedings to revoke the approval without issuing a prior Notice of Intent to Revoke. For example, after EPA issues an approval, EPA may learn of circumstances or data which show that the continued operation of the facility may pose an unreasonable risk to health or the environment. In such cases, EPA could proceed immediately with revocation proceedings under 40 CFR part 22. EPA could take such action even if there has been no violation of the applicable TSCA requirements. The following is an example of such a case: EPA issues an approval to a disposal facility employing an alternative technology to destroy PCBs. After EPA issues the approval, scientific evidence is presented showing that byproducts of the destruction process employed at the facility are highly reactive and may result in explosions under certain conditions. Although the permittee has not violated any of the applicable TSCA requirements, EPA may proceed to revoke the approval under 40 CFR part

22 because the continued operation of the facility may pose an unreasonable risk to health or the environment.

In cases where the unreasonable risk to health or the environment also constitutes an immediate risk, EPA may also issue a Notice of Proposed Suspension or a Notice of Immediate Suspension as appropriate.

C. Criteria for Suspending Approvals

EPA is justified in suspending an approval without first conducting a 40 CFR part 22 hearing in cases in which an "immediate risk" exists. The rule proposes two mechanisms for such a suspension: the Notice of Proposed Suspension and the Notice of Immediate Suspension. In both cases an immediate risk must be present. The meaning of immediate risk is discussed in Unit III.C.1. of this preamble. The Notice of Proposed Suspension would provide a prompt, informed opportunity for the permittee to challenge the suspension prior to its taking effect. It may be issued when the injury caused by the risk is unlikely to occur before a pre-suspension review of the suspension is held. The Notice of Immediate Suspension would provide an opportunity to contest the suspension only after the suspension takes effect, but within 30 days of issuance of the suspension, and would be issued if the injury is likely to occur before a pre-suspension review can be held.

1. *Immediate risk defined.* EPA is proposing to suspend a facility's approval without first conducting a formal hearing in certain situations. In the PCB context, such a situation exists when an "immediate risk" exists. "Immediate risk" is defined as any situation posed by any condition, practice, or violation of TSCA, or its regulations, or a condition of an approval issued under TSCA, which the Administrator determines presents a risk to health or the environment that is not likely to be adequately abated before the completion of revocation of the approval under 40 CFR parts 22 and 761.

The Agency will only seek suspension where a Complaint for Revocation has been, or is being simultaneously issued. A complaint for revocation will only be issued if one or more of the criteria in § 761.107 are met. Each of those criteria presupposes the existence of an unreasonable risk to health or the environment. Moreover, a suspension will be sought only where the risk to health or the environment is not likely to be adequately abated before the completion of the revocation proceedings.

2. Examples of immediate risk.

Because there are countless combinations of circumstances which may constitute an immediate risk, this term is defined broadly in this proposed rule. EPA provides the following examples to demonstrate, but not exhaust, the types of situations in which it may find an immediate risk:

a. A facility holds an EPA approval to store and dispose of PCB wastes. The facility accumulates large amounts of wastes and stores them in excess of the 1-year regulatory limit on storage. In addition, the facility continues to accept and store wastes from its customers in excess of its disposal capacity. EPA may find an immediate risk in such a case.

b. An inspector discovers that a facility is accepting and disposing of wastes which substantially exceed the maximum concentration of PCBs authorized in its approval. EPA may find an immediate risk in such a case.

c. An inspector finds that a facility is failing to properly dispose of wastes generated during disposal, for example, by dumping the wastes in a ditch behind the facility. EPA may find an immediate risk in such a case.

d. A facility submits as part of its approval application specifications regarding protective clothing for workers and a list of safety measures to be observed by workers in particular parts of the facility. An inspector finds a written notice posted by management at the site stating that employees can disregard certain of these requirements. The inspector determines that the employees are indeed disregarding these requirements. EPA may find an immediate risk in each case.

The above examples are by no means a complete list of cases in which EPA may find an immediate risk. They are merely illustrative of conditions and circumstances which could justify issuance of a Notice of Proposed Suspension or a Notice of Immediate Suspension based on a finding of immediate risk.

D. Discussion of Procedural Requirements

1. *Procedures for revocation—in general.* Many types of violations of the applicable requirements may cause EPA to initiate revocation proceedings against a permittee. In certain cases, there will be no "immediate risk" justifying issuance of a Notice of Proposed Suspension or a Notice of Immediate Suspension. Nor will there be grounds for immediate commencement of revocation proceedings. In such instances, the following procedures are proposed to govern the revocation

action. This proposed rule would amend 40 CFR part 22 to make it applicable to proceedings for revocation of PCB approvals.

a. *Notice of Intent to Revoke*— i. *Service of notice.* EPA would commence a revocation action under this rule by issuing a Notice of Intent To Revoke. Under the proposal, service of a copy of the signed original of the Notice of Intent To Revoke, together with a copy of the applicable regulations (40 CFR part 761, subpart F), would be made personally or by certified mail, return receipt requested, upon the permittee of the facility or a designated agent or other representative. Service would be complete upon tender or mailing, and would not be deemed incomplete because of any refusal to accept the notice or failure to sign the return receipt. Service upon a permittee which is a domestic or foreign corporation or a partnership or other unincorporated association which is subject to suit under a common name, would be made to an officer, a partner, a managing or general agent, or any other person authorized by appointment or by Federal or State law to receive service of process. Service upon an officer or agency of the United States would be made to the officer or agency, or in any manner prescribed by applicable regulations. If the agency is a corporation, it would be served as a corporation. Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentality would be made by serving a copy of the complaint in the manner prescribed by the law of the state for the service of process of any such person.

ii. *Contents of notice.* The proposed procedures would require that a Notice of Intent To Revoke be in writing, and signed by the Administrator or a designee, and state:

- (1) The nature of the violation.
- (2) A reasonable description of the portion of the operation to which the violation applies.
- (3) The remedial action required to abate the violation, which may include interim steps.
- (4) A schedule for the permittee to abate the violation.
- (5) A warning that if the permittee fails to abate the violation within the specified schedule, the EPA may issue a Complaint for Revocation.
- (6) A warning that if the EPA discovers that the criteria in §§ 761.110 or 761.114 are met, the EPA may issue either a Notice of Proposed Suspension or a Notice of Immediate Suspension to suspend the facility's approval pending the outcome of revocation proceedings.

The proposed requirement that EPA state the remedial action required to abate the violation in the Notice of Intent To Revoke is intended to give notice to the permittee of the conditions which must be met before EPA would find that compliance has been achieved. EPA would not be required to prescribe specific actions the permittee must take to correct the violation. EPA need only set out the standard it will use to determine whether compliance has been achieved. A citation of the applicable regulations would fulfill this requirement.

iii. *Termination of the notice where violations are remedied.* To give the permittee a chance to prevent any revocation action by remedying the violation, this proposal provides that EPA would be required to withdraw a Notice of Intent To Revoke in writing to the permittee when EPA determines that all violations listed in the Notice of Intent to Revoke have been abated. Issuance or withdrawal of this notice would not affect EPA's right to assess penalties or remedies for the violations described in this notice, or to commence revocation proceedings for violations not listed in the Notice of Intent to Revoke.

This proposal provides that EPA extend the time set for abatement if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee and the violation does not present an unreasonable risk of injury to health or the environment. Any such extension would be in writing.

The total time for abatement, including all extensions, would not exceed 90 days, unless the permittee can make a good faith showing that it is not feasible to abate the violation, using best efforts, within 90 days for reasons not within the permittee's control.

iv. *Reservation of right to issue Notice of Proposed Suspension or Notice of Immediate Suspension.* Circumstances which initially warrant issuance of a Notice of Intent to Revoke may worsen after revocation proceedings have begun. In such a case, EPA may wish to exercise its power to issue a Notice of Proposed Suspension or a Notice of Immediate Suspension. Therefore, this proposal provides that issuance of a Notice of Intent to Revoke would not limit EPA's right to issue a Notice of Proposed Suspension, where the criteria for a suspension are also satisfied.

b. *Revocation under 40 CFR part 22 where violation is unabated.* To ensure that the threat posed by the violation in question is remedied promptly, the proposed rule would set a limit on the

time the permittee has to achieve compliance. This proposal provides that the total time for remedying the violations would not exceed 90 days, unless the facility can make a good faith showing that it is not feasible to meet this deadline, using best efforts, for reasons not within its control. Therefore, this proposal provides that when a Notice of Intent To Revoke has been issued and the affected facility fails to abate the violation within the abatement period fixed or subsequently extended by EPA, EPA could commence revocation proceedings under proposed subpart F (40 CFR part 761 subpart F) and part 22.

2. *Procedures for revocation without advance notice to the permittee.* Where a violation is willful or where a violation, practice, or condition of the permittee constitutes an unreasonable risk to public health or the environment, EPA would immediately commence a revocation proceeding by issuing a Complaint for Revocation under 40 CFR part 22, without providing the permittee with Notice of Intent to Revoke or an opportunity to correct the violation. Grounds for immediate commencement of revocation under 40 CFR part 22 are proposed in § 761.107.

Because EPA has already promulgated formal hearing procedures for assessment of civil penalties under TSCA at 40 CFR part 22, EPA has decided it would be appropriate to use these procedures for revocation proceedings as well. To make these procedures applicable to PCB approval revocations, the proposal would amend the part 22 revocation procedures as discussed later in this Unit.

a. *Issuance of Complaint for Revocation.* The proposed rule would amend part 22 by specifying the required contents of a Complaint for Revocation. The rule also would amend part 22 to add to the definition of "permit" an approval for PCB storage or disposal issued under section 6(e) of the TSCA. The proposal provides that such a Complaint for Revocation would be in writing, would be signed by the Administrator or a designee, and would set forth with reasonable specificity:

- i. The nature of the violation or condition that is the basis for revoking the approval.
- ii. A reasonable description of the portion of the facility's operation to which revocation applies.
- iii. A warning that if the permittee fails to answer the Complaint for Revocation under this section within 30 days after receipt of the Complaint for Revocation, the approval shall be automatically revoked.

iv. Any provisions deemed necessary by EPA to govern the termination of activities under the approval.

b. *Automatic revocation where permittee fails to answer.* The proposed rule would provide that unless a Complaint for Revocation is withdrawn by EPA, EPA would automatically revoke the approval 31 days after service of the Complaint for Revocation unless the permittee files an answer in a timely manner to the Complaint for Revocation. In such a case the proposal would require the permittee to comply with the provisions for termination of activities under the approval described in the Complaint for Revocation.

c. *Withdrawal of Complaint for Revocation.* EPA wishes to preserve its flexibility in negotiating a settlement with a facility which would allow the facility to remain in business once EPA has initiated a revocation action. The proposal thus provides that EPA may withdraw the complaint, or any part thereof, without prejudice one time before the answer has been filed. After one withdrawal before the filing of an answer, or after the filing of an answer, EPA may withdraw the complaint, or any part thereof, only upon motion granted by the judicial officer. In addition, if the violation or condition that is the basis for the Complaint for Revocation was not caused by lack of diligence on the part of the permittee, and the violation or condition could be mitigated through the imposition of modified approval conditions, EPA may, without prejudice and without consent of the judicial officer, issue a modified approval to require the permittee to take action to mitigate any unreasonable risk caused by the violation, condition, or practice. The modified approval may contain additional terms and conditions as determined by EPA to be necessary to ensure that the facility's operations will not pose an unreasonable risk of injury to health or the environment. The Complaint for Revocation would be withdrawn by written notice to the permittee. Termination of the Complaint for Revocation would not affect EPA's right to assess penalties or remedies for the violations in question.

EPA's policy is to publicize enforcement actions. EPA would therefore publicize actions to revoke an approval at the time EPA issues a Complaint for Revocation. However, there is no requirement in the rule that EPA publicize revocation actions.

3. *Procedures where an immediate risk justifies suspension prior to a formal hearing—*a. *Notice of Proposed Suspension.* i. *Issued only in conjunction with Complaint for Revocation.* A situation serious enough to warrant

suspension of operations under an approval (because an immediate risk is posed) will also warrant revocation of the approval. Therefore, the proposal requires that a Notice of Proposed Suspension would only be issued together with or after a Complaint for Revocation under proposed §§ 761.108 and 22.33. The revocation and suspension actions would proceed concurrently.

ii. *Service of the notice.* The proposed requirements for service are the same as those for a Notice of Intent To Revoke.

iii. *Content of the notice.* Because a Notice of Proposed Suspension would only be issued in cases involving immediate risks, it is particularly important that the notice require that the permittee remedy the violation to avoid an immediate risk to health or the environment. Therefore, the proposal provides that the Notice of Proposed Suspension be in writing, be signed by the Administrator or a designee, and set forth with reasonable specificity:

(1) The nature of the condition, practice, or violation that has caused the immediate risk.

(2) A reasonable description of the portion of the facility's operation to which it applies.

(3) The remedial actions or affirmative obligations required for abatement of the immediate risk and actions to be taken to avoid the suspension.

(4) The schedule established for abatement of the immediate risk.

(5) Any steps which EPA deems necessary to secure the facility from any hazards which might arise during the period of cessation of operations, including steps necessary to close the facility or affected portion of operations, if closure requirements are not included in the facility's approval.

(6) A statement that if the permittee requests a pre-suspension hearing in writing within 19 days after service of the Notice of Proposed Suspension, a representative of the appropriate EPA Office will conduct an expedited hearing under proposed § 761.112 solely on the question of whether an immediate risk exists. The statement would also state that if the permittee fails to submit a written request for review of the suspension within 19 days after service of the notice, the approval would be automatically suspended. The statement would also provide the name and address of the EPA official to contact to request review of the suspension.

The proposed requirement that EPA state the remedial action required to abate the violation in the Notice of Proposed Suspension is intended to give notice to the permittee of the conditions which must be met before EPA will find

that compliance has been achieved. EPA would not be required to prescribe specific actions the permittee must take to correct the condition or violation. EPA need only set out the standard it will use to determine whether compliance has been achieved. A citation of the applicable regulations would fulfill this requirement.

iv. *Suspension if no request for pre-suspension review.* The proposal provides that unless the Notice of Proposed Suspension is terminated by the Administrator, the approval would be suspended automatically 20 days after service of the Notice of Proposed Suspension unless the permittee requests a pre-suspension review within 19 days after service of the Notice of Proposed Suspension. The proposal would require that the permittee comply with the provisions for suspension of activities described in the Notice of Proposed Suspension.

v. *Termination of the notice.* EPA may modify or terminate a Notice of Proposed Suspension by written notice to the permittee upon a determination that any or all conditions, practices, or violations listed in the Notice have been abated. Termination would not affect EPA's right to revoke the approval and/or assess penalties or remedies for the conditions, practices, or violations in question.

vi. *Pre-suspension review—*(1) *Scope of review.* Because the pre-suspension review is intended to be an opportunity for the permittee to challenge the suspension, and not the ultimate revocation of the approval, the proposal provides that the scope of review of a Notice of Proposed Suspension would be limited to whether the criteria for suspension are met.

(2) *Timeframe and location.* The proposal provides that the appropriate EPA Office will give notice of the time, place and subject matter of the pre-suspension review to the permittee within 7 days of receipt of a request for such review. The pre-suspension review can be held either in the county where the permittee resides or conducts business which the hearing concerns, in a city where the relevant EPA Regional Office is located, or in Washington, DC. Upon a showing of good cause, the location can be changed to any other site, or to a site reasonably close to the facility if there is a need for a site visit to resolve any issues raised.

(3) *Conduct of the review.* If a hearing is conducted, it will not be a formal hearing under section 554 of Title 5 of the United States Code (5 U.S.C. 554). The proposal provides that the pre-suspension review would be conducted

by a representative of the appropriate EPA Office. To ensure that the person presiding at the review is unbiased, the representative conducting the pre-suspension review would not be the individual who issued the Notice of Proposed Suspension and Complaint for Revocation. Oral or written comments and arguments may be presented at the hearing and will be included in the written record of the proceeding. A written transcript of the proceedings will be taken. Any written evidence EPA uses to support the suspension, along with any written evidence the permittee uses to defend against issuance of a suspension would be included in the record of the proceeding.

(4) *Decision.* The proposal provides that within 10 days after completion of the pre-suspension review, the appropriate EPA Office who conducted the review would render a written decision. If the appropriate EPA Office decides to issue a suspension, the decision would state the basis for this decision and would require termination of operations. The decision would be sent to:

(a) The permittee.

(b) The Administrator.

(c) Any State or local regulatory authority having jurisdiction over the affected facility.

(5) *Effect of suspension.* The proposal provides that if a suspension is issued, it would remain in effect pending completion of the revocation proceeding or until the immediate risk which resulted in the issuance of the suspension has been abated to the satisfaction of EPA as communicated to the permittee in writing.

(6) *Waiver by the permittee of the pre-suspension review—(a) What constitutes waiver.* The proposal provides that if the permittee fails to appear at the pre-suspension review and the Notice of Proposed Suspension was properly served, the permittee would be deemed to have waived the right to a hearing.

(b) *Effect of waiver.* The proposal provides that if the pre-suspension review is waived the suspension would automatically take effect.

The suspension and revocation of the approval are two distinct actions. Therefore, the proposal provides that the granting or waiver of the pre-suspension review would not affect the right of a permittee to a formal adjudication under 40 CFR part 22 with respect to a Complaint for Revocation. There are two exceptions to this provision:

(i) The permittee to whom the Notice of Proposed Suspension and Complaint for Revocation were issued could

respond by submitting a signed and notarized statement to EPA waiving all rights to review of the Notice of Proposed Suspension and a hearing on the Complaint for Revocation, and consenting to the revocation of the facility's approval, including compliance with conditions for the closure of the facility's operations (or affected portion) as deemed necessary by EPA to close and secure the facility and abate any immediate health or environmental risks posed by the facility's operations. The effect of such a statement would be a final revocation of the approval, except as permitted under the terms of the closure approval.

(ii) The permittee to whom the Notice of Proposed Suspension was issued could also respond to the notice by submitting to EPA a signed and notarized statement waiving all rights to review of the notice, and consenting to the indefinite suspension of the facility's approval. The effect of such a statement would be to extend the term of the suspension indefinitely, pending a final decision on revocation.

(iii) *Effect of failure to comply with the terms of the suspension.* The proposal provides that failure to comply with the terms of any suspension would, under section 15(1) of TSCA, constitute a "prohibited act" since it would violate a rule promulgated under section 6(e) of TSCA. This would render the violator subject to actions under sections 16 and 17 of TSCA. In addition, if failure to comply with the suspension constitutes an imminent hazard under section 7 of TSCA, the violator could be subject to sanctions authorized by that section, including, but not limited to, injunctions and seizure.

b. *Notice of Immediate Suspension—*
i. *Issued only in conjunction with a Complaint for Revocation.* A Notice of Immediate Suspension could only be issued together with or after a Complaint for Revocation under §§ 761.108 and 22.33. The suspension and revocation actions would proceed concurrently.

ii. *Service of the notice.* Under the proposal, the same service requirements would apply to a Notice of Immediate Suspension and a Notice of Intent To Revoke.

iii. *Content of the notice.* As in the case of a Notice of Proposed Suspension, a Notice of Immediate Suspension could only be issued in cases involving immediate risk to health or the environment. Again, it is important that the notice require that the permittee remedy the violation to avoid any immediate risks to health or the environment. The proposal, therefore, provides that a Notice of Immediate

Suspension be in writing, be signed by the Administrator or a designee, and set forth with reasonable specificity:

(1) The nature of the condition, practice, or violation that has caused the immediate risk.

(2) A reasonable description of the portion of the facility's operation to which the suspension applies.

(3) The remedial actions or affirmative obligations required for abatement of the immediate risk and actions to be taken to comply with the suspension.

(4) The time established for abatement of the immediate risk and actions to be taken to comply with the suspension.

(5) Any steps which EPA deems necessary to secure the facility from any hazards which might arise during the period of cessation of operations, including steps necessary to bring about the closure of the facility or affected portion of operations, where appropriate, if closure requirements are not included in the facility's approval.

(6) A statement that if the permittee requests a post-suspension review in writing within 19 days after service of the Notice of Immediate Suspension, a representative of the appropriate EPA Office would conduct an expedited review solely on the question of whether an immediate risk exists. The statement would also advise that, if the permittee fails to submit a written request for review of the suspension within 19 days after service of the notice, the permittee would be deemed to have waived any right to review the suspension, and that the suspension would remain in effect pending revocation or withdrawal of the notice by EPA. The statement would also provide the name and address of the appropriate EPA official to contact to request the post-suspension review.

As in the case of the Notice of Proposed Suspension, the proposed requirement that EPA state the remedial action required to abate the violation in the Notice of Immediate Suspension is intended to give notice to the permittee of the conditions which must be met before EPA will find that compliance has been achieved. EPA would not be required to prescribe specific actions the permittee must take to correct the condition or violation. EPA need only set out the standard it will use to determine whether compliance has been achieved. A citation of the applicable regulations would fulfill this requirement.

iv. *Effect of the notice—(1) Effective immediately.* Under the proposal, a Notice of Immediate Suspension would be effective immediately upon service of the permittee. That is, all operations

affected by the notice must cease immediately.

(2) *Not a final revocation.* Under this proposed rule, the Notice of Immediate Suspension is a mechanism for discontinuing operations at a facility that is presenting an immediate risk to health or the environment. The immediate suspension, however, would not revoke the approval, but acts to temporarily close the facility which poses an immediate risk.

v. *Term of the notice.* The proposal provides that the suspension would remain in effect pending a final order on revocation or until the immediate risk which caused the issuance of the notice has been abated to the satisfaction of EPA, as communicated to the permittee in writing, or until the Notice of Immediate Suspension is terminated in writing by EPA or expires.

(1) *Termination of the notice.* This proposal would authorize EPA to modify or terminate a Notice of Immediate Suspension in writing to the permittee upon a determination that all conditions, practices, or violations listed in the Notice have been timely abated. Termination would not affect EPA's right to revoke the approval and/or assess penalties or remedies for those conditions, practices, or violations.

(2) *Expiration of a Notice of Immediate Suspension.*—(a) *When notice will expire.* The proposal provides that a Notice of Immediate Suspension would expire 30 days after it is served unless a post-suspension review has been held within that time, or for good cause.

(b) *Exceptions.* Because the burden is on the permittee to request a review of the suspension, this proposal provides that Notice of Immediate Suspension would not expire if the permittee waives post-suspension review, or if, with the consent of the permittee, the post-suspension review is held later than 30 days after the notice was served. The permittee would waive the right to a post-suspension review if the permittee was properly served with a notice that contained the required statement concerning waiver of the right to a post-suspension review, and failed to request a post-suspension review within 19 days after service.

(c) *Effect of expiration of the Notice of Immediate Suspension.* The immediate suspension is terminated once EPA determines that the immediate risk which lead to its issuance is abated, or it may expire if EPA fails to hold a hearing within 30 days (unless agreed otherwise) of service of the notice. In such a case, the facility's operations may resume. However, the violation, condition, or practice which lead to the

suspension may nevertheless warrant assessment of penalties or permanent revocation of the approval.

Thus, the proposal provides that the expiration of the Notice of Immediate Suspension would not affect a Complaint for Revocation or a complaint to assess penalties or remedies with respect to the violations, conditions, or practices cited in the notice.

vi. *Post-suspension review.*—(1) *No review if abatement or waiver.* When the immediate risk which lead to the suspension is abated to EPA's satisfaction, and the suspension notice is terminated in writing, operations could resume. Therefore, under the proposal, a post-suspension review need not be held in such a case. Similarly, if the permittee waives the right to a post-suspension review, there would be no review.

(2) *Scope of the review.* The proposal provides that the post-suspension review of a Notice of Immediate Suspension would be limited to consideration of whether the criteria for suspension are met. Revocation proceedings are the proper forum to address all other issues regarding the approval.

(3) *Timeframe and location.* A hearing would be held after immediate suspension of a license or approval to review promptly the correctness of the suspension. The proposal requires that within 7 days of receipt of a request for a post-suspension review, the appropriate EPA Office would give notice of the time, place, and subject matter of the post-suspension review to the permittee. The post-suspension review can be held either in the county where the permittee resides or conducts business which the hearing concerns, in the city where the relevant EPA Regional Office is located, or in Washington, DC. Upon a showing of good cause the location can be changed to any other site, or to a site reasonably close to the facility if there is a need for a site visit to resolve any issues raised by the post-suspension review.

(4) *Conduct of the review.* The purpose of the post-suspension review is to provide a meaningful opportunity for the permittee to present its case to EPA promptly after the suspension takes effect, and thus reduce the chance that EPA will act without considering all the relevant facts and circumstances. There is no requirement that this proceeding be a formal hearing governed by APA requirements, since the affected party will have the opportunity to challenge the revocation of the approval in a formal hearing. Therefore, the proposal provides that section 554 of Title 5 of the United States Code (5 U.S.C. 554),

regarding the requirements for formal adjudicatory hearings, would not govern post-suspension reviews. The post-suspension review would be conducted by a representative of the appropriate EPA Office, who could accept oral or written arguments and any other relevant information from any person attending. To ensure fairness in the review, the proposal provides that the representative conducting the post-suspension review would not be the individual who issued the Notice of Immediate Suspension and Complaint for Revocation.

(5) *Decision.* The proposal provides that within 10 days after the close of the post-suspension review, the appropriate EPA Office who conducted the post-suspension review would affirm or vacate the Notice of Immediate Suspension in writing.

If the appropriate EPA Office who conducted the post-suspension review affirms the suspension, or affirms the suspension with modifications, the written decision would state briefly the basis for the decision. The decision would be sent to:

- (a) The permittee.
- (b) The Administrator.
- (c) Any State or local regulatory authority having jurisdiction over the affected facility.

If the suspension is affirmed, the suspension would remain in effect pending completion of the revocation proceeding or until the immediate risk which resulted in the issuance of the suspension has been abated to the satisfaction of EPA as communicated to the permittee in writing.

If the representative who conducted the post-suspension review vacates the suspension, the written decision would state briefly the basis for the decision. The decision would state that operations affected by the Notice of Immediate Suspension may resume immediately. The vacating of the suspension would not affect the revocation proceedings already underway.

(6) *Waiver of post-suspension review.*—(a) *What constitutes a waiver.* The proposal provides that if a permittee fails to submit a written request for review of a suspension within 19 days after receipt of the Notice of Immediate Suspension, this would constitute waiver of any right to review of the suspension. In such a case, the suspension shall remain in effect pending revocation, or withdrawal of the notice by EPA.

(b) *Effect of waiver.* Because the suspension and revocation actions would be separate proceedings, the

granting or waiver of the post-suspension review would not affect the right of a permittee to a formal adjudication under 40 CFR part 22 with respect to a Complaint for Revocation with two exceptions as follows:

(i) The permittee to whom the Notice of Immediate Suspension and Complaint for Revocation were issued could submit to EPA a signed and notarized statement waiving all rights to review of the notice and a hearing on the Complaint for Revocation, and consenting to the revocation of the facility's approval. Such waiver includes compliance with all conditions for the closure of the facility's operations (or affected portion) as deemed necessary by EPA to close and secure the facility and abate any hazards posed by the facility's previous operations. The effect of such a statement would be a final revocation of the approval, except as permitted under the terms of the closure approval.

(ii) The permittee to whom the Notice of Immediate Suspension and Complaint for Revocation were issued could respond by submitting to EPA a signed and notarized statement waiving all right to review of the notice and a hearing on the Complaint for Revocation and consenting to the indefinite suspension of the facility's approval. The effect of such a statement would be to extend the term of the suspension indefinitely, pending a final decision on revocation, or withdrawal of the notice of suspension by EPA.

(c) *Effect of failure to comply with the Notice of Immediate Suspension.* Under the proposal, failure to comply with the terms of the Notice of Immediate Suspension would be a violation of TSCA section 15(1) as it would violate a rule under section 6(e) of TSCA. The violator would be subject to the appropriate sanctions under TSCA sections 16 and 17. In addition, if failure to comply with the suspension constitutes an imminent hazard under section 7 of TSCA, the violator could be subject to actions authorized by that section, including, but not limited to, injunctions and seizure.

4. *Alternative procedures for revocation proceedings.* As an alternative to using 40 CFR part 22 for permit revocation procedures, which are outlined in Unit III.D.1. and 2. of this preamble, EPA is proposing two additional procedures. EPA invites comments on which of the three proposed procedures is best suited for permit revocation proceedings. Following review of the comments received, EPA will choose the procedures it deems most appropriate.

a. *Modified part 22 Procedure.* The first alternative procedure proposed to

revoke a permit is a modified part 22 hearing. Section 22.33 contains supplemental rules of practice which alter part 22 hearing procedures for TSCA civil penalty assessments. For the purpose of a permit revocation proceeding, § 22.33 would be amended to allow:

i. The Presiding Officer to be an attorney who is an employee or authorized representative of EPA, and who has had no prior connection with the case, including the performance of any investigative or prosecutorial function.

ii. The Presiding Officer to schedule any prehearing conference, pursuant to § 22.19(a), on a date not later than 21 days after the answer is filed.

iii. The parties to file any exchange of witness lists and documents, pursuant to § 22.19(b), not later than 21 days after the answer is filed.

iv. The Presiding Officer to schedule any hearing, pursuant to § 22.21(b), on a date not later than 45 days after the answer is filed.

v. The Presiding Officer to issue and file the initial decision, pursuant to § 22.27(a), within 30 days after the period for filing reply briefs under § 22.26 has expired.

vi. The Administrator to issue a final order on appeal, pursuant to § 22.31(a) within 30 days after the filing of all appellate briefs or oral argument, whichever is later.

b. *Using proposed suspension procedures to revoke an approval.* The second alternative to using part 22 procedures in approval revocation actions is to use the same procedures now proposed for approval suspension proceedings, which are outlined in Unit III.D.3. of this preamble.

The three proposed revocation procedures offer different mixes of procedural requirements. The "suspension procedure" option would allow EPA to revoke an approval using a relatively streamlined hearing process. The "part 22 hearing" option would require that all current part 22 procedural requirements be met before an approval could be revoked. Finally, the modified part 22 option would amend current part 22 procedures with respect to certain time limits and by eliminating the requirement that the presiding officer be an Administrative Law Judge. If the modified part 22 procedures are adopted, EPA would retain the option of using full part 22 procedures in circumstances where, upon EPA's discretion, permit revocation and civil penalty actions are brought at the same time.

IV. Official Rulemaking Record

EPA has not identified any documents used in this rulemaking to include in the official record. However, EPA is in the process of establishing a rulemaking record, and all public comments will be included in the rulemaking record which can be viewed in Rm. NE G004 at the times and location stated earlier in this proposal.

V. Other Regulatory Requirements

A. 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 rule is not a major rule as defined in section 1(b) of the Executive Order. The proposed rule would not effect the economy, because it imposes no additional obligations upon the regulated community. The purpose of this rule is to clarify the circumstances in which EPA may suspend or revoke PCB approvals, and to set out procedures by which this may be done. EPA has authority to suspend or revoke the approvals it issues even in the absence of such a rule. Therefore, the rule would have no economic consequences and is not a major rule under the Executive Order. A regulatory impact analysis is therefore not required. This rule was submitted to the Office of Management and Budget (OMB) under Executive Order 12291 for review.

B. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA may certify that a rule will not, if promulgated, have a significant impact on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis.

The effect of this rule, if promulgated, will be to make public the criteria upon which EPA will base its decisions to suspend or revoke PCB disposal and storage approvals, as well as the procedures EPA will use to suspend or revoke these approvals. Because EPA already has authority to suspend and revoke the approvals it issues, this rule has no impact on small entities.

I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. authorizes the Director of the Office of Management and Budget (OMB) to review certain information collection requests by Federal agencies. There are no requirements in this rule that qualify as a "collection of information" as defined in 44 U.S.C. 3502(4).

List of Subjects in 40 CFR Parts 22 and 761

Administrative practice and procedure, Environmental protection, Hazardous chemicals, Hazardous substances, Hazardous waste, Labeling, Penalties, Polychlorinated biphenyls (PCBs), Reporting and recordkeeping requirements, Superfund.

Dated: October 11, 1990.

William K. Reilly,
Administrator.

Therefore, 40 CFR chapter I is proposed to be amended as follows:

1. In part 22:

PART 22—[AMENDED]

a. By revising the authority for part 22 to read as follows:

Authority: 7 U.S.C. 136(l) and (m); 15 U.S.C. 2605, 2615; 33 U.S.C. 1361, 1319, 1415, and 1418; 42 U.S.C. 6912, 6928, 6991(e), 6992(d), 7545 and 7601 9609, and 11045.

b. In § 22.01 by revising paragraph (a)(5) to read as follows:

§ 22.01 Scope of these rules.

(a) * * *

(5) The assessment of any civil penalty conducted under section 16(a), or the revocation of any approval conducted under section 6(e), of the Toxic Substances Control Act (15 U.S.C. 2615(a) and 2605(e)).

c. In § 22.03, paragraph (a) by revising the definition for "permit," and by adding a definition for "permittee" to read as follows:

§ 22.03 Definitions.

(a) * * *

Permit means a permit issued under section 102 of the Marine Protection, Research, and Sanctuaries Act or an approval for storage and/or disposal of PCBs and PCB waste issued under section 6(e) of the Toxic Substances Control Act.

Permittee means the person to whom a PCB approval was issued under part 761 of this chapter.

d. By revising § 22.33 to read as follows:

§ 22.33 Supplemental rules of practice under the Toxic Substances Control Act.

(a) *Scope of these supplemental rules.* These rules of practice shall govern, in conjunction with the consolidated rules of practice in §§ 22.01 through 22.32, all formal adjudications for the assessment of any civil penalty conducted under section 16(a) of the Toxic Substances Control Act (15 U.S.C. 2615(a)), and proceedings for the revocation of any approval issued under part 761 of this chapter. Where inconsistencies exist between provisions of this § 22.33 and the consolidated rules (§§ 22.01 through 22.32), the provisions of this § 22.33 shall apply.

(b) *Assessment of civil penalties—(1) Subpoenas.* (i) The attendance of witnesses or the production of documentary evidence may be required by subpoena. The Presiding Officer may grant a request for a subpoena upon a showing of (A) the grounds and necessity therefor, and (B) the materiality and relevancy of the evidence to be adduced. Requests for the production of documents shall describe the evidence sought as specifically as practicable.

(ii) Subpoenas shall be served in accordance with § 22.05(b)(1).

(iii) Witnesses summoned before the Presiding Officer shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears. Where a witness appears pursuant to a request initiated by the Presiding Officer, fees shall be paid by EPA.

(2) [Reserved]

(c) *Definitions.* For purposes of revocation of an approval under this section, the term "Complaint for Revocation" shall mean the document used to initiate revocation of any approval for storage and disposal of PCBs and PCB waste under this section.

(d) *Complaint for Revocation—(1) Issuance and content of Complaint for Revocation.* A Complaint for Revocation issued under part 761 of this chapter and this section shall be in writing, shall be signed by the Administrator, and shall set forth with reasonable specificity:

(i) The nature of the violation or condition that is the basis for revoking the approval.

(ii) A reasonable description of the portion of the facility's operation to which revocation applies.

(iii) A warning that if the permittee fails to answer in writing the Complaint for Revocation within 30 days after receipt of the Complaint for Revocation, the approval shall be automatically revoked.

(iv) Any provisions deemed necessary by the Administrator to govern the termination of activities under the approval.

(2) *Automatic revocation.* Unless a Complaint for Revocation is dismissed or withdrawn by the Agency under paragraph (d)(3) of this section, or unless the permittee timely answers the Complaint for Revocation, an approval shall be revoked automatically 31 days after service of the Complaint for Revocation. The permittee shall comply with the provisions for termination of activities under the approval described in the Complaint for Revocation.

(3) *Withdrawal of Complaint for Revocation.* (i) The Agency may in its discretion dismiss or withdraw a Complaint for Revocation and any resulting proceeding under this section without prejudice one time before the answer has been filed. After one withdrawal before the filing of an answer, or after the filing of an answer, the Agency may withdraw the complaint, or any part thereof, only upon motion granted by the judicial officer. If the violation or condition set forth as the basis for the Complaint for Revocation was not caused by lack of diligence on the part of the permittee, and the violation or condition could be mitigated through the imposition of modified approval conditions, the Agency may, without prejudice and without consent of the judicial officer, issue a modified approval to require the permittee to take action to mitigate any harm caused by the violation, condition, or practice. Such modified approval may contain additional terms and conditions as determined by the Agency to be necessary to ensure that the facility's operations will not pose an unreasonable risk of injury to health or the environment.

(ii) The Agency shall withdraw a Complaint for Revocation by written notice to the permittee. Dismissal or withdrawal of the notice shall not affect the Agency's right to assess penalties or remedies for violations of the Act under sections 16 and 17.

2. In part 761:

PART 761—[AMENDED]

a. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, 2615 and 2616.

b. By adding new subpart F, consisting of §§ 761.100, 761.103, 761.105, 761.106, 761.107, 761.108, 761.110, 761.111, 761.112, 761.114, 761.115, and 761.117, to read as follows:

Subpart F — Suspension and Revocation of PCB Approvals

Sec.

- 761.100 General.
- 761.103 Definitions.
- 761.105 Criteria for issuance of Notice of Intent to Revoke.
- 761.106 Notice of Intent to Revoke.
- 761.107 Criteria for commencement of revocation action.
- 761.108 Complaint for Revocation.
- 761.110 Criteria for issuance of Notice of Proposed Suspension and suspension order.
- 761.111 Notice of Proposed Suspension.
- 761.112 Pre-suspension review.
- 761.114 Criteria for issuance of Notice of Immediate Suspension and Immediate Suspension Order.
- 761.115 Notice of Immediate Suspension.
- 761.117 Post-suspension review.

Subpart F — Suspension and Revocation of PCB Approvals**§ 761.100 General.**

(a) This subpart F sets forth the criteria and procedures which govern the suspension or revocation of PCB storage and/or disposal approvals issued pursuant to §§ 761.60, 761.70, or 761.75 (or other such provision as is designated by rule). The procedural rules included herein supplement the rules of practice in part 22 of this chapter which govern adjudicatory proceedings for the assessment of civil penalties under section 16(a) of TSCA (15 U.S.C. 2615(a)) and the revocation of approvals issued under section 6(e) of TSCA (15 U.S.C. 2605(e)). Where inconsistencies exist between the provisions of this subpart F and part 22 of this chapter, the provisions of this subpart F shall apply, in addition to EPA's other rights and powers under sections 6, 7, 16, and 17 of TSCA.

(b) In cases where the permittee has met the criteria for revocation set forth in § 761.107, EPA will use formal hearing procedures to revoke the approval. The revocation hearing will determine whether the revocation criteria have been met and will be the forum for assessing civil penalties. Except as provided in § 761.107, EPA shall give the permittee prior notice of a revocation action and a chance to correct the conditions or violations warranting approval revocation. In emergency situations, EPA may suspend the approval, pending revocation, by giving the permittee a hearing before suspension, or suspending first and then providing an expedited post-suspension review. The suspension hearing will determine whether the suspension criteria are met.

§ 761.103 Definitions.

For the purposes of this subpart, the following definitions apply:

- Administrator* means: (1) The Administrator of the Environmental Protection Agency or a designee; or
- (2) The Regional Administrator who issued the permit which is the subject of the revocation or suspension action, if the permit was issued by the EPA regional office; or
- (3) The Assistant Administrator, Office of Pesticides and Toxic Substances, who issued the approval which is the subject of the revocation or suspension action, if the approval was issued by the Assistant Administrator, Office of Pesticides and Toxic Substances; or
- (4) The Director, Exposure Evaluation Division who issued the approval which is the subject of the revocation or suspension action, if the approval was issued by the Director, Exposure Evaluation Division.

Approval or facility approval mean PCB permits and approvals issued pursuant to §§ 761.60, 761.70, or 761.75 or other such provision as is designated by rule.

Approved facility means a PCB storage or disposal facility operating with a permit or approval issued pursuant to §§ 761.60, 761.70, or 761.75 or other such provision as is designated by rule.

EPA means the Environmental Protection Agency.

EPA Office means: The EPA Regional Administrator, the EPA Assistant Administrator for Pesticides and Toxic Substances, or the Director, Exposure Evaluation Division, depending on who issued the approval which is the subject of the suspension or revocation action.

Federally-authorized inspection means any inspection:

- (1) Authorized by EPA.
- (2) Authorized by a state pursuant to an agreement with or a grant from EPA for the purpose of conducting TSCA inspections.
- (3) By a state authorized to conduct inspections under section 3006 of the Solid Waste Disposal Act, (42 U.S.C. 6926).

Immediate risk means any situation posed by any condition, practice, or violation of TSCA or its regulations, or a condition of an approval issued under TSCA, which the Administrator determines presents a risk to health or the environment that is not likely to be adequately abated before the completion of revocation of the approval under this part 761 and part 22 of this chapter.

Permittee means the person to whom the PCB approval was issued, or transferred to with EPA approval.

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

Violation of TSCA means a failure to comply with any requirement under TSCA, or any requirement, provision or condition in an approval issued pursuant to this part 761.

§ 761.105 Criteria for issuance of Notice of Intent to Revoke.

The Administrator may issue a Notice of Intent to Revoke if the Administrator finds, on the basis of any federally-authorized inspection, a violation of TSCA.

§ 761.106 Notice of Intent to Revoke.

(a) A Notice of Intent to Revoke issued under this section shall be in writing, be signed by the Administrator, and include the following:

- (1) The nature of the violation.
- (2) A description of the portion of the operation to which the violation applies.
- (3) The remedial action required to abate the violation, which may include interim steps.
- (4) A schedule for the permittee to abate the violation.
- (5) A warning that if the permittee fails to abate the violation within the specified schedule, the Administrator may issue a Complaint for Revocation to revoke the facility's approval under this part 761 and part 22 of this chapter.
- (6) A warning that if the Administrator discovers that the criteria in §§ 761.110 or 761.115 are met, the Administrator may issue either a Notice of Proposed Suspension or a Notice of Immediate Suspension to suspend the facility's approval.

(b) The Administrator may extend the time set for abatement in a notice under this section, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee, and the violation does not present an immediate risk of injury to health or the environment. Any such extension shall be in writing. The total time for abatement, including all extensions, shall not exceed 90 days, unless the permittee makes a good faith showing that it cannot abate the violation within 90 days using its best efforts.

(c) The Administrator shall withdraw a Notice of Intent to Revoke in writing to the permittee when the Administrator determines that all violations listed in the Notice of Intent to Revoke have been abated within the stated period of time. Issuance or withdrawal of this notice shall not affect EPA's right to assess

penalties or remedies for the violations described in this notice under sections 16 and 17 of TSCA and part 22 of this chapter, or to commence revocation proceedings for violations not listed in the Notice of Intent to Revoke under § 761.108 and part 22 of this chapter.

(d) Issuance of a Notice of Intent to Revoke shall not limit EPA's right to issue a Notice of Immediate Suspension under § 761.115 or a Notice of Proposed Suspension under § 761.111.

(e) Service of a Notice of Intent to Revoke, together with a copy of this subpart F, shall be made personally or by certified mail, return receipt requested. Service shall be complete upon tender or mailing, and shall not be deemed incomplete because of refusal to accept.

(1) Service shall be made upon the permittee of the facility or his representative.

(2) A permittee, which is a domestic or foreign corporation or a partnership or other unincorporated association which is subject to suit under a common name, shall have service made to an officer, a partner, a managing or general agent, or any other person authorized by appointment or by Federal or State law to receive service of process.

(3) An officer or agency of the United States shall be served by delivering a copy of the notice to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the notice shall be served as in § 761.106(e)(2).

(4) Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentality shall be made by serving a copy of the complaint in the manner prescribed by the law of the state for the service of process of any such person.

§ 761.107 Criteria for commencement of revocation action and issuance of revocation order.

(a) *Failure to abate violation.* When a Notice of Intent to Revoke has been issued under § 761.106 and the facility fails to abate the violation within the required prescribed abatement period, as confirmed by an inspection, the Administrator may commence revocation proceedings and issue a revocation order under this subpart F and part 22 of this chapter without issuing a second Notice of Intent to Revoke.

(b) *Material false statements.* Whenever the Administrator discovers that a permittee made a false statement in its application for approval, or in a supplemental statement required of the applicant, and the false statement is

material to the Administrator's decision to grant the approval, the Administrator may commence revocation proceedings and issue a revocation order under this subpart F and part 22 of this chapter without issuing a Notice of Intent to Revoke.

(c) *Pattern of violations.* (1) If the Administrator determines that a pattern of violations of any requirements imposed under TSCA, any requirements in this part 761, or any conditions of an approval exists, or has existed, the Administrator may commence revocation proceedings and issue a revocation order under this subpart F and part 22 of this chapter without issuing a Notice of Intent to Revoke.

(2) The Administrator may determine that a pattern of violations exists or has existed after considering the total circumstances, which include, but are not limited to, the citation on three or more occasions of violations of any requirement of TSCA, any requirements in part 761, or any approval condition. At least one of these cited violations must be of a requirement in part 761. EPA may also consider any other evidence of a pattern of violations.

(d) *Unreasonable risk to health or the environment.* If the Administrator determines that the continued operation of a facility poses an unreasonable risk to health or the environment, the Administrator may commence revocation proceedings and issue a revocation order under this subpart F and part 22 of this chapter without issuing a Notice of Intent to Revoke.

§ 761.108 Complaint for Revocation.

If any of the criteria set forth in § 761.107 are met, the Administrator may initiate the revocation procedures set forth in part 22 of this chapter by issuing a Complaint for Revocation pursuant to § 22.33 of this chapter.

§ 761.110 Criteria for issuance of Notice of Proposed Suspension and Suspension Order.

The Administrator may issue a Notice of Proposed Suspension of approved operations or the relevant portion of approved operations, and may issue a Suspension Order if the Administrator finds, on the basis of any federally authorized inspection, that an immediate risk exists, as defined in § 761.103.

§ 761.111 Notice of Proposed Suspension.

(a) A Notice of Proposed Suspension may only be issued together with or after a Complaint for Revocation has been issued under § 761.108 and § 22.33 of this chapter.

(b) The Notice of Proposed Suspension shall be in writing shall be signed by the Administrator, and shall set forth:

(1) The nature of the condition, practice, or violation that has caused the immediate risk.

(2) A reasonable description of the portion of the facility's operation to which it applies.

(3) The remedial actions or affirmative obligations required for abatement of the immediate risk and actions to be taken to avoid the suspension.

(4) The schedule established for abatement of the immediate risk.

(5) Any steps which the Administrator deems necessary to secure the facility from any immediate risks which might arise during the period of cessation of operations, including steps necessary to bring about the closure of the facility or affected portion of operations.

(6) A statement advising the permittee that, if the permittee requests in writing a pre-suspension hearing within 19 days after service of the Notice of Proposed Suspension, a representative of the appropriate EPA Office shall conduct an expedited hearing under § 761.112 solely on the question of whether an immediate risk exists. The statement shall also advise the permittee that if the permittee fails to submit a written request for review of the suspension within 19 days after service of the notice, the approval shall be automatically suspended. The statement shall also provide the name and address of the EPA official to contact to request review of the suspension under § 761.112.

(c) Service of a Notice of Proposed Suspension, together with a copy of this subpart F, shall be made personally or by certified mail, return receipt requested. Service shall be complete upon tender or mailing, and shall not be deemed incomplete because of refusal to accept.

(1) Service shall be made upon the permittee of the facility or his representative.

(2) A permittee, which is a domestic or foreign unincorporated association which is subject to suit under a common name, shall have service made to an officer, partner, a managing or general agent, or any other person authorized by Federal or State law to receive service of process.

(3) An officer or agency of the United States shall be served by delivering a copy of the notice to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the notice shall be served as in § 761.111(c)(2).

(4) Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentality shall be made by serving a copy of the notice in the manner prescribed by the law of the state for the service of process of any such person.

(d) Unless a Notice of Proposed Suspension is terminated by the Administrator under paragraph (e) of this section, an approval shall be suspended automatically 20 days after service of the Notice of Proposed Suspension unless the permittee requests a review under § 761.112 within 19 days after service of the Notice of Proposed Suspension. The permittee shall comply with the provisions for suspension of activities described in the Notice of Proposed Suspension.

(e) The Administrator may modify or terminate a Notice of Proposed Suspension at any time by notifying the permittee in writing. The Administrator may modify or terminate a Notice of Proposed Suspension if the permittee abates to the Administrator's satisfaction, the condition, practice, or violation which caused the immediate risk. Termination shall not affect EPA's right to revoke the approval and/or assess penalties or remedies for those conditions, practices or violations pursuant to § 761.108 and part 22 of this chapter and sections 16 and 17 of TSCA.

(f) Failure to comply with the terms of any suspension issued under this section shall constitute a violation of section 6(e) and 15 of TSCA, subject to the penalties and remedies of sections 16 and 17 of TSCA. If such failure to comply constitutes an imminent hazard under section 7 of TSCA, the violator may be subject to any penalties and remedies authorized by section 7, including, but not limited to, injunctions and seizure.

§ 761.112 Pre-suspension review.

(a) The pre-suspension review of a Notice of Proposed Suspension under § 761.111 shall be limited solely to whether the criteria for suspension under § 761.110 are met.

(b) Within 7 days of receipt of a written request for a pre-suspension review, the appropriate EPA Office shall give notice of the time, place, and subject matter of the pre-suspension review to the permittee.

(c) The pre-suspension review shall be held either in the county where the permittee resides or conducts the business which the hearing concerns, in the city where the relevant EPA Regional Office is located, or in Washington, D.C. Upon a showing of good cause, the location can be changed

to any other site, or to a site reasonably close to the facility if there is a need for a site visit to resolve any issues raised.

(d) Section 554 of Title 5 of the United States Code [5 U.S.C. 554], regarding the requirements for formal adjudicatory hearings, shall not govern pre-suspension reviews conducted under this section. The pre-suspension review shall be conducted by a representative of the appropriate EPA Office. The representative conducting the pre-suspension review shall not be the individual who issued the Notice of Proposed Suspension and the Complaint for Revocation. Oral or written comments and arguments may be presented at the review and shall be included in the written record of the proceeding. A written transcript of the proceedings shall be taken. Any written evidence the Administrator uses to support the suspension, along with any written evidence the permittee uses to defend against issuance of a suspension, shall be included in the record for the proceeding.

(e) If the permittee fails to appear at the hearing and the notice was properly served under § 761.111, the permittee shall be deemed to have waived the right to a hearing, and the suspension shall automatically take effect.

(f) Within 10 days after completion of the pre-suspension review, the appropriate EPA office shall render a written decision. If the EPA Office decides to issue a suspension, the decision shall state the basis for the suspension and shall require the suspension of operations. The decision shall be sent to:

- (1) The permittee.
- (2) The Administrator of EPA.
- (3) Any State or local regulatory authority having jurisdiction over the facility.

(g) If a suspension is issued, the suspension shall remain in effect pending completion of the revocation proceeding or until the immediate risk which resulted in the issuance of the suspension has been abated to the satisfaction of the Administrator as communicated to the permittee in writing.

(h) The Administrator may modify or terminate a suspension by written notice to the permittee when the Administrator determines that any or all conditions, practices, or violations listed in the Notice of Proposed Suspension have been abated. Termination shall not affect the right of EPA to revoke the approval and/or assess penalties or remedies for those conditions, practices or any other violation of TSCA pursuant to part 22 of this chapter and sections 16 and 17 of TSCA.

(i) The granting or waiver of the pre-suspension review under this section shall not affect the right of a permittee to a formal adjudication under part 22 of this chapter with respect to a Complaint for Revocation, except that:

(1) The permittee to whom the Notice of Proposed Suspension and the Complaint for Revocation are issued may answer by submitting to the Administrator a signed and notarized statement waiving all rights to review of the Notice of Proposed Suspension and a hearing on the Complaint for Revocation, and consenting to the revocation of the facility's approval, including compliance with conditions for the closure of the facility's operations (or the portion thereof affected by the notice) as deemed necessary by the Administrator to close and secure the facility and abate any immediate risks to health or the environment by the facility's operations. The effect of such a statement shall be a final revocation of approval to conduct storage and/or disposal operations at the facility or the affected portion thereof, except as permitted under the terms of the closure approval.

(2) The permittee to whom the Notice of Proposed Suspension is issued may answer the Notice of Proposed Suspension by submitting to the Administrator a signed and notarized statement waiving all rights to review the Notice of Proposed Suspension, and consenting to the indefinite suspension of the facility's approval. The effect of such a statement shall be to extend the term of the suspension indefinitely, pending revocation of the approval, or withdrawal by the Administrator of the Notice of Proposed Suspension.

(j) Failure to comply with the terms of any suspension issued under this section shall constitute a violation of sections 6(e) and 15 of TSCA, subject to the penalties and remedies of sections 16 and 17 of TSCA. If such failure to comply constitutes an imminent hazard under section 7 of TSCA, the violator may be subject to any remedies authorized by section 7, including but not limited to injunctions and seizures.

§ 761.114 Criteria for issuance of Notice of Immediate Suspension and Immediate Suspension Order.

The Administrator may issue a Notice of Immediate Suspension of approved operations or the relevant portion of approved operations, and issue an Immediate Suspension Order if the Administrator finds, on the basis of any federally-authorized inspection, that an immediate risk exists, as defined in § 761.103, and that the immediate risk

may occur and may not be adequately abated before a pre-suspension review under § 761.112 may be held.

§ 761.115 Notice of Immediate Suspension.

(a) A Notice of Immediate Suspension may only be issued together with or after a Complaint for Revocation has been issued under § 761.108 and § 22.33 of this chapter.

(b) A Notice of Immediate Suspension shall be effective immediately upon service of the permittee.

(c) A Notice of Immediate Suspension shall be in writing, shall be signed by the Administrator, and shall set forth:

(1) The nature of the condition, practice, or violation that has caused the immediate risk.

(2) A reasonable description of the portion of the facility's operation to which the suspension applies.

(3) The remedial actions or affirmative obligations required for abatement of the immediate risk and actions to be taken to avoid the suspension.

(4) The schedule established for abatement of the immediate risk and actions to be taken to avoid the suspension.

(5) Any steps which the Administrator deems necessary to secure the facility from any hazards which might arise during the period of cessation of operations, including steps necessary to bring about the closure of the facility or affected portions of operations.

(6) A statement advising the permittee that if the permittee requests in writing a post-suspension review within 19 days after service of the Notice of Immediate Suspension, a representative of the appropriate EPA Office shall conduct an expedited review under § 761.117 solely on the question of whether an immediate risk exists. The statement shall also advise that if the permittee fails to submit a written request for review of the suspension within 19 days after service of the Notice of Immediate Suspension, the permittee shall be deemed to have waived any right to review of the suspension and that the suspension shall remain in effect pending revocation or withdrawal of the Notice of Immediate Suspension by EPA. The statement shall also provide the name and address of the appropriate EPA official to contact to request the post-suspension review under § 761.117.

(d) Service of a Notice of Immediate Suspension, together with a copy of this subpart F, shall be made personally or by certified mail, return receipt requested. Service shall be complete upon tender or mailing and shall not be deemed incomplete because of refusal to accept.

(1) Service shall be made upon the permittee of the facility or his representative.

(2) A permittee, which is a domestic or foreign corporation or a partnership or other unincorporated association which is subject to suit under a common name, shall have service made to an officer, partner, a managing or general agent, or any other person authorized by Federal or State law to receive service of process.

(3) An officer or agency of the United States shall be served by delivering a copy of the notice to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the notice shall be served as in § 761.115(d)(2).

(4) Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentality shall be made by serving a copy of the complaint in the manner prescribed by the law of the state for the service of process of any such person.

(e) The suspension shall remain in effect pending revocation or until the immediate risk which resulted in the issuance of the Notice of Immediate Suspension has been abated to the satisfaction of the Administrator as communicated to the permittee in writing, or until terminated in writing by the Administrator, or until the Notice of Immediate Suspension expires under § 761.115(f).

(f) Except as provided in paragraph (g) of this section or for good cause, a Notice of Immediate Suspension shall expire 30 days after it is served unless a post-suspension review under § 761.117 has been held within that time.

(g) A Notice of Immediate Suspension shall not expire under paragraph (f) of this section if the permittee waives post-suspension review, or if, with the consent of the permittee, the post-suspension review is held later than 30 days after the Notice of Immediate Suspension was served. For purposes of this paragraph, the permittee will be deemed to have waived the post-suspension review if the permittee:

(1) Was properly served under this subpart F with a notice that contained the required statement concerning waiver of the right to a post-suspension review, and

(2) Fails to request a post-suspension review within 19 days after service.

(h) The expiration of the Notice of Immediate Suspension shall not affect a Complaint for Revocation or a complaint to assess penalties in accordance with proceedings commenced under § 761.108 and part 22 of this chapter with respect

to the violations, conditions, or practices cited in the notice.

(i) No post-suspension review shall be held under § 761.117 where the immediate risk in question has been abated to the satisfaction of the Administrator, or where the post-suspension review has been waived.

(j) The Administrator may modify or terminate a Notice of Immediate Suspension in writing to the permittee when the Administrator determines that all conditions, practices, or violations listed in the Notice have been abated. Termination shall not affect the EPA's right to revoke the approval and/or assess penalties or remedies for those conditions, practices, or violations cited in the notice pursuant to § 761.108 and part 22 of this chapter, and sections 16 and 17 of TSCA.

(k) Failure to comply with the terms of the Notice of Immediate Suspension shall constitute a violation of sections 6(e) and 15 of TSCA, subject to the penalties and remedies of section 16 and 17 of TSCA. If such failure to comply constitutes an imminent hazard under section 7 of TSCA, the violator may be subject to any remedies authorized by section 7, including but not limited to injunctions and seizures.

§ 761.117 Post-suspension review.

(a) The post-suspension review of a Notice of Immediate Suspension under § 761.115 shall be limited to whether the criteria for suspension are met.

(b) Within 7 days of receipt of a request for a post-suspension review, the appropriate EPA Office shall give notice of the time, place, and subject matter of the post-suspension review to the permittee.

(c) The post-suspension review shall be held either in the county where the permittee resides or conducts business which the hearing concerns, in the city where the relevant EPA Regional Office is located, or in Washington, DC. Upon a showing of good cause the location can be changed to any other site, or to a site reasonably close to the facility if there is a need for a site visit to resolve any issues raised by the pre-suspension hearing.

(d) Section 554 of Title 5 of the United States Code (5 U.S.C. 554), regarding the requirements for formal adjudicatory hearings, shall not govern post-suspension reviews conducted under this section. The post-suspension review shall be conducted by a representative of the appropriate EPA Office. The representative conducting the post-suspension review shall not be the individual who issued the Notice of Immediate Suspension and the

Complaint for Revocation. Oral or written comments and arguments may be presented at the review and shall be included in the written record of the proceeding. A written transcript of the proceedings shall be taken. Any written evidence the Administrator uses to support the suspension, along with any written evidence the permittee uses to defend against issuance of a suspension, shall be included in the record for the proceeding.

(e) Within 10 days after the close of the post-suspension review, the appropriate EPA office shall affirm or vacate the Notice of Immediate Suspension in writing. If the EPA office affirms the suspension, or affirms the suspension with modifications, the decision shall state briefly the basis for the decision. The decision shall be sent to:

- (1) The permittee.
- (2) The Administrator.
- (3) Any State or local regulatory authority having jurisdiction over the affected facility.

(f) If the suspension is affirmed, the suspension shall remain in effect pending completion of the revocation proceeding or until the immediate risk which resulted in the issuance of the suspension has been abated to the satisfaction of the Administrator as communicated to the permittee in writing.

(g) If the EPA office vacates the suspension, the decision shall state briefly the basis for the decision. The

decision shall state that operations affected by the Notice of Immediate Suspension may resume immediately upon the vacating of the suspension. The vacating of the suspension shall not affect the revocation proceedings under § 761.108 and part 22 of this chapter.

(h) The Administrator may modify or terminate a suspension by written notice to the permittee when the Administrator determines that any or all conditions, practices, or violations listed in the Notice of Proposed Suspension have been abated. Termination shall not affect the right of EPA to revoke the approval and/or assess penalties or remedies for those conditions, practices or violations pursuant to part 22 of this chapter and sections 16 and 17 of TSCA.

(i) The granting or waiver of the post-suspension review under this section shall not affect the right of a permittee to a formal adjudication under part 22 of this chapter with respect to a Complaint for Revocation, except that:

(1) The permittee to whom the Notice of Immediate Suspension and the Complaint for Revocation were issued may answer by submitting to the Administrator a signed and notarized statement waiving all rights to review of the Notice of Immediate Suspension and the Complaint for Revocation, and consenting to the revocation of the facility's approval, including compliance with conditions for the closure of the facility's operations (or the portion thereof affected by the notice) as deemed necessary by the Administrator

to close and secure the facility and abate any immediate risks to health or the environment posed by the facility's operations. The effect of such a statement shall be a final revocation of approval to conduct storage and/or disposal operations at the facility or the affected portion thereof, except as permitted under the terms of the closure approval.

(2) The permittee to whom the Notice of Immediate Suspension was issued may answer the Notice of Immediate Suspension by submitting to the Administrator a signed and notarized statement waiving all rights to review the Notice of Immediate Suspension, and consenting to the indefinite suspension of the facility's approval. The effect of such a statement shall be to extend the term of the suspension indefinitely, pending a final decision on revocation, or withdrawal by the Administrator of the Notice of Immediate Suspension.

(j) Failure to comply with the terms of any suspension issued under this section shall constitute a violation of sections 6(e) and 15 of TSCA, subject to the penalties and remedies of sections 16 and 17 of TSCA. If such failure to comply constitutes an imminent hazard under section 7 of TSCA, the violator may be subject to any remedies authorized by section 7, including, but not limited to, injunctions and seizure.

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federal register

Friday
November 2, 1990

Part VIII

The President

**Executive Order 12732—International
Fund for Agricultural Development**

**Department of Education; Delegation of
Authority**

Memorandum of August 17, 1990

Friday, October 3, 1958

Part VIII

The President

Memorandum of August 17, 1958
Authority
Department of Education, Delegation of
Fund for Agricultural Development
Executive Order 12733-International

Request Letter

Presidential Documents

Title 3—

Executive Order 12732 of October 31, 1990

The President

International Fund for Agricultural Development

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 1 of the International Organizations Immunities Act (22 U.S.C. 288), and in order to facilitate participation in the International Fund for Agricultural Development, it is hereby ordered as follows:

Section 1. The International Fund for Agricultural Development, which was established by an agreement to which the United States is a party and which entered into force on November 30, 1977, is hereby designated as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act. This designation is not intended to abridge in any respect the privileges, exemptions, or immunities that such organization has acquired by international agreement or by Act of Congress.

Sec. 2. This order shall be effective immediately.

THE WHITE HOUSE,
October 31, 1990.

