

longer meets the basic requirements for delegating the authority, or when it can be shown that the lender's reasonable value determinations have not been made in accordance with VA regulations, requirements, guidelines, instructions or applicable laws, or when there is adequate evidence to support reasonable belief by VA that a particular unacceptable act, practice, or performance by the lender or the lender's staff has occurred. Such acts, practices or performance include, but are not limited to: Demonstrated technical incompetence (i.e., conduct which demonstrates an insufficient knowledge of industry accepted appraisal principles, techniques and practices; or the lack of technical competence to review appraisal reports and make value determinations in accordance with those requirements); substantive or repetitive errors (i.e., any error(s) of a nature that would materially or significantly affect the determination of reasonable value or condition of the property; or a number or series of errors that, considered individually, may not significantly impact the determination of reasonable value or property condition, but which when considered in the aggregate would establish that appraisal reviews or LAPP case processing are being performed in a careless or negligent manner), or continued instances of disregard for VA requirements after they have been called to the lender's attention.

(1) Withdrawal of authority by the Loan Guaranty Officer may be either for an indefinite or a specified period of time. For any withdrawal longer than 90 days a reapplication for lender authority to process appraisals under these regulations will be required. Written notice will be provided at least 30 days in advance of withdrawal unless the Government's interests are exposed to immediate risk from the lender's activities in which case the withdrawal will be effected immediately. The notice will clearly and specifically set forth the basis and grounds for the action. There is no right to a formal hearing to contest the withdrawal of LAPP processing privileges. However, if within 15 days after receiving notice the lender requests an opportunity to contest the withdrawal, the lender may submit, in person, in writing, or through a representative, information and argument to the Loan Guaranty Officer in opposition to the withdrawal. The Loan Guaranty Officer will make a recommendation to the Regional Office Director who shall make the

determination as to whether the action should be sustained, modified or rescinded. The lender will be informed in writing of the decision.

(2) The lender has the right to appeal the Regional Office Director's decision to the Chief Benefits Director. In the event of such an appeal, the Chief Benefits Director will review all relevant material concerning the matter and make a determination that shall constitute final agency action. If the lender's submission of opposition raises a genuine dispute over facts material to the withdrawal of LAPP authority, the lender will be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses and confront any witness the Veterans Benefits Administration presents. The Chief Benefits Director will appoint a hearing officer or panel to conduct the hearing. When such additional proceedings are necessary, the Chief Benefits Director shall base the determination on the facts as found, together with any information and argument submitted by the lender.

(3) In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the Chief Benefits Director shall make a decision on the basis of all the information in the administrative record, including any submission made by the lender.

(4) Withdrawal of the LAPP authority will require that VA make subsequent determinations of reasonable value for the lender. Consequently, VA staff will review each appraisal report and issue a Certificate of Reasonable Value which can then be used by the lender to close loans on either the prior VA approval or automatic basis.

(5) Withdrawal by VA of the lender's LAPP authority does not prevent VA from also withdrawing automatic processing authority or taking debarment or suspension action based upon the same conduct by the lender.

(Authority: 38 U.S.C. 1831)

(Information collection requirements contained in § 36.4344 were approved by the Office of Management and Budget under control number 2900-0513)

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL-3781-2]

#### Approval and Promulgation of Implementation Plans; Minnesota

**AGENCY:** United States Environmental Protection Agency (USEPA)

**ACTION:** Final rulemaking; Direct final.

**SUMMARY:** USEPA is approving a revision to the Minnesota State Implementation Plan (SIP) for particulate matter. The revision was necessitated by USEPA's promulgation of new National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter equal to or less than 10 micrometers (PM<sub>10</sub>).

The effect of this action is to document that Minnesota's committal SIP satisfies USEPA's revised requirements for PM<sub>10</sub> in areas designated as Group II (52 FR 29385). The Group II areas in Minnesota are in Minneapolis, Hennepin County; Duluth and Iron Range, St. Louis County; Iron Range, Itasca County; Two Harbors, Lake County; and St. Cloud, Stearns County.

**DATES:** This action will be effective July 23, 1990. Unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Copies of the SIP revision, and other materials relating to this notice, are available at the following addresses. (It is recommended that you telephone Maggie Greene at, (312) 886-6088, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road, St. Paul, Minnesota 55155.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Maggie Greene, Air and Radiation Branch, U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6088.

## SUPPLEMENTARY INFORMATION:

## I. Background

On July 1, 1987, USEPA promulgated revised National Ambient Air Quality Standards (NAAQS) for particulate matter.<sup>1</sup> In the section of the Federal Register notice (52 FR 24679-82), entitled "Requirements for State Implementation Plans", USEPA set forth its SIP development policy for PM<sub>10</sub>. For areas designated as Group II under this policy, the State is required to submit either of the following two types of SIP revisions:

- (1) A complete SIP for particulate matter—10 microns and under (PM<sub>10</sub>) with accompanying modeled attainment demonstrations showing attainment and maintenance of the PM<sub>10</sub> standard within 3 years of the SIP's adoption, or
- (2) A "committal" SIP that supplements the existing SIP with enforceable commitments to perform the actions required at 52 FR 24681 for such "committal" SIPs.

On May 31, 1988, the State of Minnesota submitted a committal SIP for Group II areas to USEPA as a revision to its particulate matter SIP. The Group II areas of concern in Minnesota are in Minneapolis, Hennepin County; Duluth and Iron Range, St. Louis County; Iron Range, Itasca County; Two Harbors, Lake County; and St. Cloud, Stearns County.<sup>2</sup>

## II. Evaluation of Committal SIP Required Provisions for Group II Areas

There are five provisions that are required by USEPA for inclusion in every State committal SIP for approval. These provisions commit the State to perform the following activities:

- (1) Gather ambient PM<sub>10</sub> data, at least to an extent consistent with minimum USEPA requirements and guidance.<sup>3</sup>
- (2) Analyze and verify the ambient PM<sub>10</sub> data and report 24-hour PM<sub>10</sub> NAAQS exceedances to the appropriate Regional Office within 45 days of each exceedance.
- (3) When an appropriate number of verifiable 24-hour NAAQS exceedances becomes available (see section 2.0 of the PM<sub>10</sub> SIP Development Guideline) or

<sup>1</sup> The primary and secondary particulate matter NAAQS are now violated when either: 1) the expected annual arithmetic mean value of PM<sub>10</sub> concentrations exceeds 50 micrograms per cubic meter of air (50 µg/m<sup>3</sup>) (the annual standard), or 2) the expected number of days that the PM<sub>10</sub> concentration exceeds 150 µg/m<sup>3</sup> is more than one per calendar year (the 24-hour standard).

<sup>2</sup> These Group II areas were listed at 52 FR 29365 (August 7, 1987).

<sup>3</sup> Section 58.13 of 40 CFR part 58 requires States within 1 year after PM<sub>10</sub> NAAQS are promulgated to begin sampling PM<sub>10</sub> every day (at least at one site) in areas with a PM<sub>10</sub> nonattainment probability of 95 percent or greater, and every other day (at least at one site) in areas with a nonattainment probability between 20 and 95 percent.

when data indicating an annual arithmetic mean (AAM) above the level of the annual PM<sub>10</sub> NAAQS become available, acknowledge that a nonattainment problem exists and immediately notify the appropriate Regional Office.

(4) Within 30 days of the notification referred to in (3) above, or within 37 months of promulgation, whichever comes first, determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM<sub>10</sub> standards, and immediately notify the appropriate Regional Office.

(5) Within 6 months of the notification referred to in (4) above, adopt and submit to USEPA a PM<sub>10</sub> control strategy that assures attainment as expeditiously as practicable but no later than 3 years from approval of the committal SIP.

Comparison of the State's provisions with the above requirements indicates that no discrepancies, omissions, or shortcomings exist in the Minnesota committal SIP.

## III. Evaluation of Schedule Milestones

USEPA requires that the committal SIP include enforceable milestones with timely commitment dates, consistent with the State's PM<sub>10</sub> SIP Development Plan. Minnesota has acceptably committed to all required milestones.

## IV. USEPA's Conclusion and Final Action

To be approvable, PM<sub>10</sub> committal SIPs must incorporate all five provisions enumerated at 52 FR 24681 and provide enforceable milestone commitments that ensure program implementation. Because Minnesota's proposed committal SIP commits to all of the five requisite provisions and to all enforceable milestones, USEPA is approving the committal SIP for PM<sub>10</sub> for the State of Minnesota's Group II areas in Minneapolis, Hennepin County; Duluth and Iron Range, St. Louis County; Iron Range, Itasca County; Two Harbors, Lake County; and St. Cloud, Stearns County.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on July 23, 1990. However, if we receive notice by June 21, 1990, that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period. See 47 FR 27073 (June 23, 1982).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in the context of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 23, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

## List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental relations, Particulate matter.

Dated: May 8, 1990.  
Valdas V. Adamkus,  
Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

## Subpart Y—Minnesota

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1230 is amended by adding new paragraph (c) to read as follows:

§ 52.1230 Control strategy and rules: Particulates.

(c) Approval—On May 31, 1988, the State of Minnesota submitted a committal SIP for particulate matter with an aerodynamic diameter equal to or less than 10 micrometers (PM<sub>10</sub>) for

Minnesota's Group II areas. The Group II areas of concern are in Minneapolis, Hennepin County; Duluth and Iron Range, St. Louis County; Iron Range, Itasca County; Two Harbors, Lake County; and St. Cloud, Stearns County. The committal SIP contains all the requirements identified in the July 1, 1987, promulgation of the SIP requirements for PM<sub>10</sub> at 52 FR 24681.

[FR Doc. 90-11725 Filed 5-21-90; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 761

[CPTS-66008G; FRL 3714-8]

### Polychlorinated Biphenyls; Manufacturing, Processing, and Distribution in Commerce Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Section 6 of the Toxic Substances Control Act (TSCA) generally prohibits the manufacture, processing and distribution in commerce of polychlorinated biphenyls (PCBs). In addition, section 6 of TSCA provides a procedure where persons may petition the Administrator for good cause shown, for an exemption from these prohibitions. This rule identifies four petitions which EPA is denying, six petitions which EPA is granting, two petitions which are not required, one petition which has been withdrawn, and one petition amendment which is granted.

**DATES:** In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Daylight Time on June 5, 1990. This final rule shall be effective July 5, 1990.

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

Copies of this final rule can be obtained from the Environmental Assistance Division. Copies of the support documents for this rule can be obtained through the OTS Document Control Officer listed above.

**SUPPLEMENTARY INFORMATION:** This final rule addresses 12 individual and class petitions for exemptions and one exemption amendment from the prohibition of distribution in commerce of PCBs.

## I. Background

### A. Statutory Authority

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

Section 6(e)(3)(B) of TSCA provides that any person may petition the Administrator for an exemption from the prohibition against the manufacture, processing, and distribution in commerce of PCBs. The Administrator may by rule grant an exemption if the Administrator finds that "(i) an unreasonable risk of injury to health or environment would not result, and (ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl." The Administrator may set terms and conditions for an exemption and may grant an exemption for not more than 1 year.

### B. History of this Rulemaking

EPA has received for consideration 12 exemption petitions and one exemption amendment under TSCA section 6(e)(3)(B) which are the subject of this final rule. Four exemption petitions request approval to process and distribute in commerce PCBs for purposes of buying, selling, and servicing customers' electrical transformers. Since the buying and selling of transformers is considered a separate action from servicing, both kinds of actions have been treated independently as discussed below for the purpose of evaluating the exemption petitions. In addition, two petitions requested approval to process and distribute in commerce PCBs for use as a mounting medium in microscopy with one of those also seeking to process and distribute in commerce PCBs for use as immersion oil in low fluorescence microscopy and as an optical liquid. One petitioner requested to both (i) distribute equipment containing less than 50 ppm PCBs in commerce within the United States and, also, to (ii) export equipment containing less than 50 ppm PCBs. One petitioner requested exemptions to both (i) manufacture, and to (ii) export PCBs in small quantities for research and development.

One petitioner requested an exemption to import small quantities of PCBs for research and development. Another petitioner requested an exemption to distribute in commerce inadvertently generated PCBs. Finally, a

petition amendment was submitted requesting an exemption to process and distribute in commerce PCBs on non-porous component parts of transformers. The proposed rule for these 12 exemptions was published on August 24, 1988 (FR 32327) and the proposed exemption amendment was published on September 12, 1989 (FR 37698).

## II. Unreasonable Risk Finding

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

To determine whether a risk is unreasonable, EPA balances the probability that harm will occur to human health and the environment against the benefits to society and the ascertainable costs to the petitioner of granting or denying each petition. Specifically, EPA considers the following factors:

1. Effects of PCBs on human health and the environment.
2. Benefits to society of granting an exemption and the costs to the petitioner and to society of denying an exemption.

These factors are described at length in the preamble to the August 24, 1988 proposed rule (53 FR 32327).

## III. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA requires petitioners to demonstrate a good faith effort to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for PCBs. EPA considers several factors in determining whether a petitioner has demonstrated good faith efforts. For each petition, EPA considers the kind of exemption the petitioner is requesting and whether the petitioner expended time and effort to develop or search for a PCB substitute. In each case, the burden is on the petitioner to show specifically what it did to substitute non-PCB material for PCBs or to show why it was not feasible to substitute non-PCBs for PCBs.

## IV. Disposition of Pending Exemption Petitions

### A. Processing and Distribution in Commerce of PCBs for Purposes of Servicing Customers' Transformers

*Electric Apparatus Service Association.* The Electric Apparatus Service Association (EASA) petitioned for a renewal of its 1-year exemption to process and distribute in commerce PCB-contaminated fluid for the purpose of servicing transformers.

As a preliminary matter, EPA is answering general questions about how it interprets section 6(e) and implements regulations regarding exemptions. This discussion is intended to clarify any confusion brought about by past statements regarding the processing and distribution in commerce of PCBs for purposes of servicing customers' PCB and PCB-contaminated transformers and introducing PCB-contaminated fluid into the customers' PCB and PCB-contaminated transformers.

First, no exemption is required for the owner of PCB or PCB-contaminated equipment to service his own equipment. This includes putting PCB fluids from equipment he owns back into his own equipment. The intent of this provision, first announced in the May 31, 1979 PCB rule, is to allow utilities and other industrial owners/users of equipment to maintain their own PCB equipment without an exemption.

No exemption is required for a servicing company to reintroduce PCB fluids or PCB-contaminated fluids derived from a customer's equipment back into that customer's equipment during servicing. Since ownership of the PCB fluids does not change, this servicing does not constitute processing or distribution in commerce of PCBs.

Further, a servicing company may also introduce less than 50 ppm fluids into customers' equipment without an exemption, in accordance with the use authorization granted by rule published on June 27, 1988, the "Uncontrolled Rule Amendments," and prior EPA statements acknowledging the special status of these fluids.

After 1979, however, the servicing of PCB equipment by anyone other than the owner/user, which involves introducing a service company's PCBs (greater than 50 ppm) into a customer's equipment, does require an exemption, since this constitutes processing and distribution in commerce of PCBs by the service company.

*a. Background.* In discussing the EASA exemption petitions in the proposed rule, EPA found that the activities of this exemption request would not present an unreasonable risk. EPA agreed that: (1) The amount to be processed and distributed in commerce in servicing customer's transformers was a relatively small percentage of the PCBs in circulation in PCB-contaminated transformers; (2) the transformers would be serviced by EASA members in accordance with the 40 CFR 761.30(a)(2) regulatory requirements; (3) granting the exemption would avoid costs of approximately \$10 million (\$37,500 per company); and (4) granting an exemption would make it easier for

small utilities continue to provide efficient and reliable electrical service throughout the United States. Thus, EPA concluded that EASA had met the statutory requirement of not presenting an unreasonable risk of injury to human health and the environment.

In the proposed rule of August 24, 1988, however, EPA concluded that EASA had not met the burden of demonstrating good faith efforts to substitute non-PCB fluids for PCB-contaminated fluids in servicing customers' equipment. EPA is aware that non-PCB fluids are available and are perfectly acceptable as a substitute fluid during servicing. If PCB fluids greater than 50 ppm are reused during servicing, the effect is to perpetuate the use of PCBs, and to defer opportunity to dispose of the service company's PCB contaminated fluids. Also, EPA concluded that there has been adequate time for EASA members to become familiar with PCB fluid prohibitions, to make other arrangements for disposal of fluids, and to acquire non-PCB fluids for their servicing needs.

*b. Decision on petition.* Although EASA has satisfied the statutory requirement pertaining to no unreasonable risk, it has failed to meet sufficiently the requirements of good faith efforts. EPA considers several factors in determining whether a petitioner has demonstrated a good faith effort. One such factor is whether the petitioner expended time and effort to develop or search for a substitute. The burden is on the petitioner to show specifically what it did to substitute non-PCB material for PCBs or to show why it was not feasible to do so. Although EASA contends good faith efforts have been made to reduce PCBs, EASA has failed to demonstrate any effort to significantly reduce the amount of PCBs in fluids in inventory. EPA also believes that although EASA can be commended for its diligent education efforts, EASA has had sufficient time to complete both the education of members and the implementation of the necessary procedures. To date, EASA has had over 3 years to notify its members and to implement the regulatory requirements. Therefore, EASA's petition requesting permission to process and distribute members own PCB-contaminated bulk fluids greater than 50 ppm, during servicing of customers' transformers, is hereby denied.

EPA strongly recommends that, when performing minor servicing on PCB-contaminated transformers or rebuilding customer's equipment, EASA members should reuse the customer's fluid or refill the transformer with clean fluid and provide the customer with

information on reclassification procedures, to the greatest extent possible, so as to avoid creating new volumes of PCB-contaminated mineral oil. The rebuilt units that are cleaned, rewound, and refilled with non-PCB fluid can most probably be successfully reclassified to non-PCB status, once placed on-line for a 90-day period by the customer.

#### *B. Processing and Distribution in Commerce of PCBs in Buying and Selling Transformers*

*1. Electric Apparatus Service Association.* EASA also petitioned for a renewal of its 1-year exemption to process and distribute in commerce PCB bulk fluid and non-porous, PCB-contaminated component parts that have been double-rinsed in the buying and selling of PCB-contaminated transformers. EPA denied the petition as it relates to bulk fluids but as grants the petition as it relates to component parts.

*a. Background.* Again, EPA is clarifying the applicable regulatory provisions and past statements which EPA has made regarding the processing and distribution in commerce of PCBs during the buying and selling of used PCB Transformers and PCB-contaminated transformers. EPA is aware that there have been seemingly conflicting views expressed in prior statements about this activity, including the fundamental question of when an exemption is required.

In January, 1984, an EPA letter regarding an EASA exemption may have caused confusion about the status of buying and selling activities under the PCB regulations. "Buying and selling" typically involves a servicing company acquiring failed or obsolete equipment from a user, performing minor or major repairs on the unit, and then selling it as repaired or rebuilt equipment. The requirement of an exemption for buying and selling of PCB and PCB-contaminated equipment is concerned both with "buying and selling" as a distinct activity from the processing and servicing that may occur prior to resale of the equipment.

Although distinct under the PCB regulations, "buying and selling" activities can involve processing and distribution in commerce of bulk PCB dielectric fluids and the PCB residues on the equipment components.

In the past, EPA made statements made by EPA about the more general regulatory requirements (40 CFR 761.20(c)(1)) for distributing totally enclosed PCBs and PCB Items. Particularly, statements made prior to July 10, 1984 may have caused confusion

in the context of "buying and selling" by service companies, as opposed to buying and selling by owner/user companies.

Section 761.20(c)(1) of the regulations states that: "PCBs at concentrations of 50 ppm or greater, or PCB Items with PCB concentrations of 50 ppm or greater, sold before July 1, 1979 for purposes other than resale may be distributed in commerce only in a totally enclosed manner after that date." This has been interpreted to mean that no exemption is needed to distribute in commerce (sell) a PCB-contaminated transformer that is totally enclosed (intact and non-leaking) when sold, if the unit was originally sold prior to July 1, 1979 for purposes other than resale.

This provision of the regulations had also been interpreted in the past as allowing subsequent sales (domestic) of totally enclosed equipment "by anyone to anyone," if the equipment was originally bought for use before July 1, 1979. In letters to EASA, prior to the July 10, 1984 PCB exemptions rule, EPA suggested that this provision covered sales by service companies, and that no exemption was required if these conditions alone were met and that no exemption was required of a service company, if the service company added only less than 50 ppm fluid to the equipment. This was interpreted to mean that a PCB-contaminated unit to which only less than 50 ppm fluid was added could be sold without an exemption, even though it had not been reclassified to "non-PCB" status before being sold.

The July 10, 1984 PCB exemption rule made a distinction between the owners/users and the servicers. EPA would like to clarify further, at this time, the distinction made in the regulatory language between the owners/users and servicers/rebuilders. The regulatory intent of the exemption is to allow utility and other industrial owners/users of equipment to maintain their own PCB equipment without an exemption. The servicing of PCB equipment by one other than an owner/user, however, does require an exemption if it involves processing and distribution in commerce of PCBs.

The business of frequent buying and selling of transformers by servicers/rebuilders is quite different from casual or occasional sales between owners/users. EPA's regulation of this activity is analogous to the case of servicing with PCB-contaminated fluid, in that no exemption is required for an owner/user to service equipment with PCBs, but an exemption is required for the same activity when performed by a service company.

EPA concludes that "buying and selling" transactions by service companies are, in fact, to be more stringently regulated than sales between owners/users of equipment.

Specifically, an exemption is needed where a service company introduces its own PCB-contaminated fluids into equipment being resold because reselling constitutes distribution in commerce. An exemption is also required in any event when a service company resells a PCB-contaminated transformer. This means an exemption is required when any PCB-contaminated unit is resold by a service company, including those units that are PCB-contaminated when they are resold in the same condition as purchased, (i.e., no fluids added by service company), or when they are resold after the service company has reintroduced PCB-contaminated fluid to it (including the fluid originally drained from it). Finally, an exemption is required to resell PCB-contaminated units to which non-PCB fluid has been added, but which have not been reclassified to non-PCB status.

Again, the PCBs subject to regulation here are the PCB-contaminated fluids derived from the company's or from customers' equipment and PCB residues on components salvaged from such equipment. The resale of electrical equipment can involve processing and distribution in commerce of PCBs from both sources.

EPA reemphasizes that "buying and selling" activities are prohibited without an exemption whenever the result would be the resale by the service company of a PCB-contaminated unit. These activities are prohibited regardless of the source of the PCB-contaminated fluid. It applies even if the activity entails the mere replacement with fluid drained from the unit, because, in that situation, a servicer's PCB-contaminated fluid is then being distributed in commerce and "sold" to the purchaser.

b. *Decision on petitions.* In the August 24, 1988 proposed rule, EPA proposed to deny the EASA petition related to "buying and selling" activities. Based on the same factors as listed in the preceding EASA servicing exemption request, EPA found that the buying and selling activities related to this petition comply with the statute's no unreasonable risk requirements of section 6(e)(3)(B)(i) of TSCA.

EPA found, however, that EASA failed to show sufficient evidence of good faith efforts in finding and using non-PCB substitute fluids in the equipment as required by section 6(e)(3)(B)(ii) of TSCA. EPA considers

several factors in determining whether a petitioner has demonstrated good faith efforts. One such factor is whether the petitioner expended time and effort to develop or search for a substitute or to reduce its inventory. However, the burden is on the petitioner to show specifically what it did to substitute non-PCB material for PCBs, to reduce its inventory of PCBs, or to show why it was not feasible to do so. EASA has not demonstrated to EPA that it has made any significant reduction in the use of PCB-contaminated bulk fluids in the equipment than had originally been associated with the petition granted to EASA in 1984. Nor has EASA indicated why it is not feasible to do so.

Where bulk fluids are concerned, EASA has not provided any additional information that would rebut EPA's findings on good faith efforts in the proposed rule. EPA has determined to deny the petition insofar as it requests permission to reintroduce any PCB-contaminated bulk fluids, greater than 50 ppm, into equipment prior to resale.

Most of the written comments and hearing testimony submitted in response to the August 24, 1988 Proposed Exemption Rule focused on the processing and resale of non-porous components from transformers, rather than the bulk PCB-contaminated fluids, as the more significant issue of concern.

EASA formally amended its original petition to include components parts, and there has been considerable comment identifying the significance of the components issue in this rulemaking. EPA reopened the comment period to solicit comments on this amended petition (54 FR 37699).

EPA has determined that, due to the non-porous nature of these component parts and, also, because of the relatively small amounts of PCBs involved (less than 10 percent of the original petition amount), the activity of reusing component parts presents no unreasonable risk to health and the environment.

Regarding the benefits to society of granting an exemption, EASA maintains that, without access to their stockpiles of component parts, both economic loss to the member companies and detriment to the society would be incurred. EASA asserts that its members may be put out of business if reuse of these components is prohibited, due to their inability to repair transformers during the activities of buying and selling used transformers and servicing customers' transformers.

Although EPA makes no judgment regarding this claim, EPA acknowledges that without stocks of component parts, many transformers could not be

repaired promptly. There could be a severe detriment to equipment users as a result of the interruptions of electrical services as well as the premature disposal of reusable units.

To support its claim of good faith effort to reduce inventories of PCB-contaminated components, EASA has submitted a substantial amount of evidence to indicate an effort to develop a double-rinse method to remove PCBs from the non-porous component parts that would be reused on the PCB-contaminated transformers. This double-rinse procedure, if demonstrated successfully, will employ a protocol similar to that in EPA's spill cleanup policy (40 CFR part 761, subpart G). EASA maintains that the introduction of the double-rinsed, non-porous component parts back onto the PCB-contaminated transformers will not change the original parts per million PCB content of the transformer into which the component is incorporated.

In further support of EASA's current attempts to demonstrate compliance with the TSCA good faith efforts standard, EASA submitted evidence to EPA that there may be no substitute for some components needed to repair or rebuild equipment, and that it is not feasible to sample the existing stockpiles of components for historic PCB contamination.

EPA concludes, therefore, that the amendment to the exemption petition that is limited to processing and distribution in commerce of the PCB residues on non-porous, double-rinsed transformer component parts as well as buying and selling of PCB or PCB-contaminated transformers that have been serviced with double-rinsed, non-porous parts, meets both the no unreasonable risk and good faith efforts standards. While EPA is denying the section of the exemption petition requesting exemptions for servicing transformers with PCB-contaminated bulk fluids, it has determined to grant a class exemption for 1 year on the amendment of the exemption petition to process and distribute in commerce non-porous, double-rinsed components that may have PCB residues. Also, EPA is granting the petition to buy and sell PCB-contaminated transformers that have been serviced with double-rinsed, non-porous component parts. EPA has concluded that granting an exemption for servicing and reselling of PCB and PCB-contaminated, non-porous components will accomplish a significant reduction in PCBs being introduced into commerce by the service companies.

There has been growing concern, by both the public and EPA about the

potential risks posed by the uncontrolled storage at service companies of PCB equipment that is used for component parts in servicing transformers. Therefore, in future requests for renewal of their exemptions, EPA will consider the petitioner's evidence of no unreasonable risk and good faith efforts by evaluating whether stockpiles of component parts have been effectively decontaminated and, also, whether inventories of PCB and PCB-contaminated transformers in uncontained storage areas have been reduced.

EPA will, therefore, evaluate any further exemptions based upon: (1) Demonstration of the efficacy of a method to decontaminate existing stocks of non-porous components; (2) evidence showing that the PCB-contaminated transformers in inventory have been identified and placed in PCB storage areas with proper containment similar to that required under § 761.65(b); and (3) evidence that all future sources of the components, including inventories of PCB-contaminated transformers stored on-site for reuse, will be properly identified and managed.

2. *Ward Transformer.* Ward Transformer petitioned for a 1 year exemption to process and distribute in commerce PCBs in buying and selling of PCB-contaminated transformers.

Ward Transformer is engaged in the same types of activities as other EASA members; however, as Ward might differ from the rest of EASA, EPA will address the petition request filed by Ward Transformer individually. This is explained in the EPA decision on the following exemption request by Jerry's Electric.

In the August 29, 1985 Notice of Petition Denial (50 FR 35192), EPA found that Ward was in non-compliance with the storage for disposal requirements under 40 CFR 761.65(a) for large quantities of PCB-contaminated fluid. EPA concluded that this activity could pose an unreasonable risk to human health and the environment according to section 6(e)(3)(B)(i) of TSCA.

According to its new petition for exemption, Ward has since disposed of the stored PCB-contaminated fluid that was the subject of the prior enforcement action. The petitioner provided EPA with copies of manifests and certifications showing that between 18,000 and 20,000 gallons of PCB-contaminated fluid were disposed of by an EPA permitted disposal company.

Although this new information allays, to some extent, EPA's concern about the petitioner's good faith efforts, as well as the unreasonable risk requirements

under TSCA, EPA is denying Ward's petition for an exemption, based on other considerations.

First of all, the 18,000 to 20,000 gallons of PCB-contaminated fluid which Ward has disposed of arose from improper storage of fluids derived from past servicing activities. This disposal, however, is only of marginal value in predicting the amounts of PCB fluids that will be handled during the period of the new exemption and whether those amounts demonstrate a good faith effort to substitute non-PCBs. EPA has not found that Ward demonstrated a significant reduction of current inventories of PCB fluids or of finding substitutes for PCB fluids.

In this final rule, EPA has denied the similar EASA and Jerry's Electric petitions, which relate to bulk fluids, on the basis of failure to show good faith efforts as required under TSCA section 6(e)(3)(B)(ii). Ward has not presented any evidence which shows that, it is, in fact, greatly reducing current inventories of PCB fluids or finding substitutes for PCB fluids. Ward has, therefore, not proven to be distinct in this respect from the other EASA members.

EPA has, thus, determined to deny the Ward Transformer petition for an exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers, due to its failure to show substantial evidence that the requirement of TSCA section 6(e)(3)(B)(ii) of good faith efforts has been satisfied. EPA acknowledges that Ward Transformer does have approval under the EASA exemption to process and distribute in commerce the PCB residues encountered on non-porous component parts of PCB-contaminated transformers during the buying, selling, and rebuilding of transformers. Ward shall, therefore, still be allowed to reuse component parts, as explained in Unit IV.B.1 above, concerning EASA's petitions.

3. *Jerry's Electric, Inc.* Jerry's Electric petitioned for a 1-year exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers. Jerry's is engaged in the same types of activities as other EASA members. The regulations pertaining to the processing and distribution in commerce of PCBs during the activities of servicing customers' transformers and buying and selling used transformers were discussed above under the EASA exemptions.

Jerry's was originally singled out from the other EASA members in this request for an exemption because of its claims of good faith efforts. Jerry's presented

evidence that it would rebuild and resell only about 450 PCB-contaminated transformers, or about 10 percent of the units it rebuilt. During the comment period following the proposed exemption rule of August 24, 1988, EPA found that these claims made by Jerry's are not significantly different from other EASA members and do not vary widely from the industry standard. Because efforts to reduce inventory, rather than overall percentage of PCBs in inventory are required to meet the good faith efforts standard, EPA concludes that Jerry's has not shown significant evidence of good faith efforts of reducing its inventory or of finding substitutes for its PCB fluids.

Also, during the comment period on the proposed rule, EASA requested clarification on the need for an exemption in rebuilding of transformers and inquired how the regulations applied to the activities engaged in by Jerry's Electric. EASA maintained in their hearing comments that since Jerry's was buying only PCB-contaminated equipment and adding less than 2 ppm fluid to that equipment prior to resale, that Jerry's did not actually need an exemption.

Jerry's does need an exemption to resell PCB-contaminated transformers regardless of the concentration of PCB fluid or even if no fluid at all is added to the transformer. If a transformer is still PCB-contaminated when resold (because of not being reclassified or otherwise), the sale requires an exemption. This is further explained and clarified above, in the EASA petition decision. While EASA is correct in pointing out that an exemption is not required to add non-PCB fluid to a transformer, EPA does require an exemption for service companies to resell PCB-contaminated electric equipment.

Therefore, EPA acknowledges that Jerry's Electric also has approval under the EASA exemption to process and distribute in commerce the PCB residues encountered on non-porous component parts of PCB-contaminated transformers during the buying, selling, and rebuilding of transformers.

EPA denies, however, Jerry's petition to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers based on the lack of evidence to support the good faith efforts requirement of TSCA section 6(e)(3)(B)(ii).

*C. Distribution in Commerce of Equipment Containing Less than 50 ppm PCBs for Use in the U.S. and Abroad.*

EPA received one petition for exemption to distribute in commerce

within the United States, die casting machines and trim presses, as well as hydraulic, heat transfer, and other miscellaneous equipment in use and in storage for reuse, which contain less than 50 ppm PCBs. This same petitioner requested an exemption to distribute in commerce the same equipment for export.

*General Motors Corporation.* On December 22, 1986, General Motors Corporation (General Motors) submitted two petitions for exemptions to distribute in commerce certain die casting machinery and trim presses, hydraulic, heat transfer, and other miscellaneous equipment in use or in storage for reuse. One petition was for distribution in commerce of PCB equipment within the United States. Another petition request was for distribution in commerce of PCB equipment for export from the United States.

On June 27, 1988, subsequent to General Motor's request for an exemption, EPA promulgated amendments to the July 10, 1984 use authorization rule or the "Uncontrolled PCB Rule." This final amendment announced an additional regulatory exclusion for certain products ("excluded PCB products") which contain less than 50 ppm PCBs. The exclusion allows the use, processing, and distribution in commerce of products containing less than 50 ppm PCBs, provided these products were legally manufactured, processed, distributed in commerce or used prior to October 1, 1984. Due to this generic exclusion announced in the June 27, 1988 Uncontrolled Rule Amendment (FR 24206), EPA has determined that the die casting and other miscellaneous equipment that is the subject of GM's petition are "excluded PCB products" within the meaning of 40 CFR 761.3. The activities for which General Motors requested an exemption are to: (1) Distribute in commerce within the United States die casting and similar equipment contaminated with less than 50 ppm PCB; and (2) export such equipment contaminated with less than 50 ppm PCBs.

As such, the equipment is excluded from the prohibitions on processing and distribution in commerce, and an exemption is not required to distribute them in commerce for use within the United States or to export them from the United States.

*D. Microscopy*

EPA received two petitions to process and distribute in commerce PCBs for use as a mounting medium in microscopy. PCBs are used in art and historic

conservation to preserve specimens for later study, and in identifying and preserving small particles, including environmental contaminants, industrial contaminants, and crime scene trace evidence. The identification of these particles is based on the form, structure, and optical properties of these particles as they appear relative to the optical properties of PCBs. EPA has authorized indefinitely the use of PCBs as a mounting medium in microscopy.

1. *McCrone Accessories & Components, Division of Walter C. McCrone Associates, Inc.* The McCrone Accessories & Components (McCrone) petition is in the form of a request for renewal of its 1-year exemption granted in July, 1984 to engage in the processing and distribution in commerce of PCBs for use as a mounting medium in microscopy.

In the August 24, 1988, Proposed PCB Exemption Rule, EPA proposed to deny the petitioner's request for another 1-year exemption because the petitioner had shown no efforts to reduce the sale and use of PCBs where possible or to develop a chemical substance which may be substituted for PCBs as required by section 6(e)(3)(B)(ii) of TSCA. Thus, although the unreasonable risk requirement was met, the petitioner had failed to meet the statutory requirement of good faith efforts as required by section 6(e)(3)(B)(ii) of TSCA.

During the comment period, however, McCrone responded to this proposed determination by providing further clarification of the very specific and unique purposes intended for the Aroclor 5442 in their exemption petition. McCrone has explained that Aroclor 5442 has superior properties for use in criminalistics and, also, for the characterization of old-master paintings for which very small quantities of the Aroclor are needed for the microscopic examination of these art collections.

The physical properties of Aroclor that cause it to be a superior substance for permanent particle mounting in microscopy work include the following characteristics of PCBs:

- a. They are colorless in thin layers.
- b. They are chemically stable so properties do not change over extended periods of time (essential for art authentication and evidence preservation).
- c. They have low viscosity at 100 °C (centigrade), but very high viscosity at room temperature.
- d. They have refractive indices very close to 1.662 (to optimize contrast enhancement of mounted particles).

e. They have a viscosity and refractive index very resistant to change over time.

There was sufficient documentation in the comments to the Proposed PCB Exemption Rule of August 24, 1988 to show that significant efforts have been made to develop substitutes for Aroclors as mounting mediums for other than temporary preparations, with little success. Possible substitutes, thus far, have not been able to duplicate all the physical properties that make Aroclor exceptional as a mounting medium, and they tend to break down in less than 3 years. The prospects for development of adequate substitutes are remote because the small quantities of PCBs involved in these highly specialized uses serve as a deterrent to commercial development of substitutes.

The cumulative usage of Aroclor as a mounting medium, an immersion oil, and as a refractive index liquid is de minimus, in that only 1 liter per year of Aroclor is used by all of the microscopists combined and just one ounce of Aroclor 5442 will produce at least 4,000 individual microscope slide preparations. Also, professionally trained personnel using Aroclor in the controlled laboratory conditions make every reasonable effort to ensure proper mounting of the slides and no environmental contamination of PCBs.

Based on the comments submitted by McCrone, EPA has concluded that substitutes are not available for the use of PCBs as a permanent microscopic mounting medium. However, EPA has found that good faith efforts have been made by McCrone to find a substitute for PCBs.

EPA has determined to grant the McCrone petition for renewal of its exemption. In addition, EPA has determined to automatically renew the McCrone petition to process and distribute PCBs in commerce for use as a mounting medium in microscopy unless the petitioner notifies EPA of any change in the quantity of PCBs processed or distributed in commerce or unless EPA receives any other information from the public regarding either of the requisite findings upon which this exemption is based. EPA, also, reserves the authority to exclude any processing or distribution in commerce of PCBs from the automatic renewal of the exemption upon determination that maintaining its exemption will pose an unreasonable risk of injury to human health or the environment. Any changes in the disposition of this exemption would be published in a notice of proposed rulemaking.

2. *R.P. Cargille Laboratories, Inc.* R.P. Cargille Laboratories, Inc. (Cargille) Cargille petitioned for a renewal of its 1-year exemption to process and distribute in commerce PCBs for (1) use as a mounting medium in microscopy; (2) use as an immersion oil in low fluorescence microscopy; and (3) use as an optical liquid.

In the proposed PCB exemption rule, EPA found no evidence that Cargille had developed PCB-free replacements as it alleged in the July 1984 exemption petition. Since several factors are considered in determining whether a petitioner has made good faith efforts and because the burden rests on the petitioner to show specifically what it did to substitute non-PCBs for PCBs or show why it did not seek to substitute non-PCBs for PCBs, EPA could not make a finding of good faith efforts in this petition. Therefore, EPA proposed to deny Cargille's new exemption request based on its failure to demonstrate the statutory requirements of good faith efforts to find PCB substitutes.

Cargille has, however, submitted comments to the August 24, 1988 proposed PCB exemption rule. A great deal of research was undertaken and clarification given to satisfy the TSCA section 6(e)(3)(B)(ii) requirement. Cargille submits that replacements have been developed for virtually all low-fluorescence microscopy uses, as well as for use as a mounting medium in all but the "most harsh and militarily critical environments such as high energy, uv, laser, and thermonuclear radiation communication/targeting applications." For those very specific applications, there is no available substitute that achieves all the necessary physical and optical properties of PCBs. These include high stability, high refractive index, low optical dispersion, and low auto-fluorescence. Thus, the requirement to demonstrate good faith efforts to substitute non-PCB has been satisfied for purposes of these limited applications.

These comments further support the unreasonable risk requirement of section 6(e)(3)(B)(i) of TSCA. Professionally trained personnel work under controlled laboratory conditions using disposable gloves and working under an exhaust hood. Also, only minute quantities of PCBs are used at a time. Cargille submits that these are sufficient controls to prevent injury to human health and the environment.

For these reasons, EPA determined that Cargille demonstrated both good faith efforts in finding substitutes for PCBs and that no unreasonable risks will result from the exempted activities.

Therefore, EPA has determined to grant Cargille an automatic renewal of its exemption requests. The same contingencies apply to this exemption as to the one granted to McCrone. Cargille must notify EPA of any change in the quantity of PCBs or method of handling the PCBs which are involved in the automatic renewal of the exemption.

Thus, the petition will be automatically extended 1 year from the effective date of this rule, unless EPA receives any other information from the public regarding either of the requisite findings upon which this exemption is based. EPA, also, reserves the authority to exclude any processing or distribution in commerce of PCBs from the automatic renewal of the exemption upon determination that maintaining its exemption will pose an unreasonable risk of injury to human health or the environment. Any changes in the disposition of this exemption would be published in a notice of proposed rulemaking.

#### E. Research and Development

EPA received two petitions for exemption from the same petitioner; one petition requesting an exemption to manufacture PCBs for use in small quantities for research and development and the other petition requesting an exemption to export PCBs for use in small quantities for research and development. EPA also received from a second petitioner a request for an exemption to import small quantities of PCBs for research and development.

EPA has determined that the good faith efforts finding is not applicable to petitions to manufacture or to export PCBs in small quantities for research and development on projects consistent with the overall purposes of section 6(e) of TSCA, such as using PCBs as standards for the purpose of measuring PCB concentrations or using PCBs in the study of health or environmental effects of PCBs, because, in these cases, there are no PCB substitutes. There will always be a need for pure analytical standards to be developed to support laboratory analysis for PCBs. Also, pure PCBs are needed in critical health and environmental research because commercial PCBs contain mixtures of isomers and contaminants which may adversely affect experimental research, and in general, PCBs are being phased out of use and are less available for areas of critical research and development.

EPA authorized, indefinitely, the use of PCBs in small quantities for research and development in the Use Authorization Rule published in the

Federal Register of July 10, 1984. But the manufacturing, importing, or exporting of PCBs in small quantities for research and development is not allowed without specific individual exemptions. Therefore, EPA must make a company-specific determination before granting petitions for exemption to manufacture, import, or export PCBs for use in research and development.

1. *Accu-Standard*. On April 11, 1986, *Accu-Standard* submitted two petitions for exemptions. One petition was to manufacture PCBs in small quantities for research and development and one was to export PCBs in small quantities for research and development.

*Accu-standard* has shown that their PCBs are manufactured using good laboratory practices by trained laboratory personnel. The PCBs are packaged in hermetically sealed containers of 5 mL or less (by volume) and are marked with warning labels. As little as 200 mg and no more than 100 g of PCBs will be synthesized per year.

Because of the small quantity limitations and the carefully controlled conditions on PCB manufacture, EPA finds that no unreasonable risk will result from granting an exemption to *Accu-Standard* to manufacture PCBs in small quantities for research and development.

EPA generally treats petitions for exemption to export PCBs more stringently than petitions for exemption to distribute PCBs within the United States, because EPA has little or no control over the distribution, use, and disposal of PCBs once they have been exported. However, EPA believes that those concerns are mitigated in the export of PCBs in small quantities for research and development by the viscosity, quantity, marking, and packaging of the PCBs, as well as by the careful handling of the PCBs by trained personnel. Since *Accu-Standard* will be exporting no more than 800 g per year of PCBs under this exemption, EPA finds that no unreasonable risk will result from granting the exemption.

Therefore, EPA has determined to grant *Accu-Standard* the exemptions to both manufacture and to export PCBs in small quantities for research and development.

EPA will automatically renew the exemptions every year. However, *Accu-Standard* will be required to notify EPA each year of any changes in the quantity or the manner of handling PCBs under the *Accu-Standard* exemption(s). EPA will review such information, and reserve the authority to change the status of the exemption(s) if necessary, by rulemaking.

2. *Unison Transformer Services, Inc.* On April 24, 1987, *Unison Transformer Services, Inc.* (Unison) submitted a petition for exemption to import into the United States small quantities of PCBs for research and development. Unison is actually requesting an exemption to import small quantities of samples of PCB-containing fluid taken from PCB Transformers which have been retrofilled, for the purpose of testing and analysis. Unison wants to analyze this fluid to determine the PCB concentration, moisture content, and other parameters, as part of its customer service program.

Although the amounts, handling and other parameters of this petition request emulate those of the "small quantities for research and development" definition, EPA distinguishes this petition from others previously granted for "small quantities for research and development." TSCA section 3 defines importation as manufacture, so the manufacturing exemption is required. Unison is not asking, however, for permission to manufacture new PCBs which are indispensable in scientific and environmental research. Instead, they are asking to import (for analysis) existing PCB samples drawn from electrical equipment they are servicing abroad. While the unreasonable risk findings from the proposed rule are still valid, this petition should be more properly characterized as one for importing (manufacturing) existing PCB fluids for analysis of existing PCBs rather than as one for importing for scientific research and development.

Should Unison follow the conditions of the petition, that is: (i) The use of 5.0 mL hermetically sealed vials, (ii) an imported total not to exceed 250 samples per year during the exemption period, (iii) quarterly inspections of its laboratories to ensure that proper safety procedures are being followed, and (iv) sufficient absorbent shall be placed around the shipping container to prevent PCB release should an accident occur, EPA concludes that there will then be no unreasonable risk of injury to health or the environment.

Unison stated that denial of its application would significantly hinder its efforts to offer its services in many countries, which would adversely impact efforts to remove PCBs from U.S. corporate-owned transformers abroad. They also state that granting their petition would expedite removal and destruction of PCBs in many nations. Therefore, EPA believes that the goal under section 6(e) of TSCA to phase out the manufacture, processing, distribution in commerce, and use of PCBs is consistent with granting this

petition to import small quantities of PCBs for analysis in aid of PCB disposal activities. The importation of small quantities of existing PCB fluid for analysis, under the safeguards described above, will aid in the worldwide reduction of PCB fluids still in use.

Unison has explored the alternative of having these analyses conducted in the countries in which the samples are taken, but found that these countries do not have the necessary experience to quantitate PCBs in Unison's proprietary fluid. EPA is satisfied that Unison has made good faith efforts to have these analyses conducted in foreign countries.

Therefore, EPA grants Unison an exemption for 1 year to import no more than 250 samples of PCB-contaminated fluid taken from PCB Transformers for purposes of testing and analysis. EPA will also automatically renew the exemption every year. However, Unison will be required to notify EPA each year of any changes in the quantity handled, in the manner of handling PCBs under Unison's exemption, or the availability of foreign laboratories for the required analysis. EPA will review such information and any other information related to the findings upon which this exemption is based, and change the status of the exemption, if necessary, by rulemaking.

#### F. Inadvertently Generated PCBs

EPA received one renewal petition for exemption to process and distribute inadvertently generated PCBs above allowable concentration levels for "excluded manufacturing processes."

*Aluminum Company of America*. On July 24, 1987 the Aluminum Company of America (ALCOA) requested a renewal of its 1 year exemption to distribute in commerce aluminum chloride (AlCl<sub>3</sub>) containing inadvertently generated PCBs above the limits established in the July 10, 1984 Uncontrolled PCB Rule.

EPA was notified on June 2, 1989, that ALCOA withdrew its request for an exemption. EPA therefore, makes no determination on ALCOA's July 24, 1987 petition for an exemption.

#### V. Other Regulatory Requirements

##### A. Executive Order 12291

Under Executive Order 12291, issued February 17, 1982, 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 that term is defined in section 1(b) of the Executive Order.

EPA has concluded that this rule is not "major" because the annual effect of the rule on the economy will be considerably less than \$100 million; it will not cause any noticeable increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of U.S. enterprises to compete with foreign enterprises in domestic or foreign markets. This rule allows the manufacture, processing and distribution in commerce, and export of PCBs that would otherwise be prohibited by section 6(e)(3)(A) of TSCA for the petitioners who met the requirements of section 6(e)(3)(B) of TSCA and the Interim Procedural Rules for PCB Exemptions. This rule was submitted to the Office of Management and Budget (OMB) for review prior to publication, as required by the Executive Order.

#### B. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (the Act), 5 U.S.C. 603, requires EPA to prepare and make available for comment an initial regulatory flexibility analysis in connection with rulemaking. The initial regulatory flexibility analysis must describe the impact of the final rule on small business entities. Section 605(b) of the Act, however, provides that section 603 of the Act "shall not apply to any proposed or final rule if the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA has tried to estimate the cost of this rule on the small businesses whose petitions EPA has denied. For purposes of this regulatory flexibility analysis, EPA considers a small business to be one whose annual sales revenues were less than \$40 million. This cutoff is in accordance with EPA's definition of a small business for purposes of reporting under section 8(a) of TSCA, which was published in the *Federal Register* of November 16, 1984 (49 FR 45430).

EPA is denying the exemption petition that was submitted by EASA on behalf of approximately 265 small businesses who want to process and distribute PCBs in servicing customers' electrical transformers. EPA estimates that the costs of denial of the petition would be approximately \$10 million (approximately \$37,500 per company) which is approximately the same as the estimate made in 1984 (PCB Exemption Petitions Economic Impact Analysis, April 1984).

EPA is denying one petition that was submitted by EASA on behalf of approximately 265 small businesses who want to process and distribute in commerce PCBs in buying and selling transformers. EPA estimates that the incremental costs of denial to be at most \$160 for a average size PCB-contaminated transformer, assuming all of the transformer fluid has to be disposed of and replaced.

EPA is granting EASA's exemption amendment requesting to process and distribute in commerce PCB residues on non-porous, double-rinsed component parts of transformers and to buy and sell PCB or PCB-contaminated transformers to which such component parts have been added.

EPA is denying both Jerry's Electric and Ward Transformer an exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers.

EPA is granting the two exemption petitions to process and distribute in commerce PCBs for use as a mounting medium in microscopy, which had previously been denied.

EPA is granting McCrone's petition for exemption to process and distribute in commerce PCBs for use as a mounting medium in microscopy. EPA is also granting Cargille's petition for exemption to process and distribute in commerce PCBs for use as a mounting medium in microscopy, use as an immersion oil in low fluorescence microscopy (other than capillary microscopy), and use as an optical liquid.

Therefore, in accordance with section 605(b) of the Act, EPA certifies that this final rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities. In addition, EPA is sending a copy of this final rule to the Chief Counsel for Advocacy of the Small Business Administration.

EPA further notes that section 606 of the Act states that the requirements of section 603 do not alter in any manner standards otherwise applicable by law to Agency action. Current law, section 6(e)(3)(A) of TSCA and EPA's PCB Ban Rule, 40 CFR part 761, prohibits the manufacture, processing, and distribution in commerce of PCBs. This rule, under section 6(e)(3)(B) of TSCA, exempts persons from these prohibitions where EPA has found that petitioners have demonstrated that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that they have made good faith efforts to develop substitutes for PCBs. Both small and

large businesses must meet the same statutory standard. Thus, even if EPA believed that it was an economically desirable policy to grant an exemption petition for a small business, it could do so only if the small business met the requirements set forth in TSCA. Therefore, this rule does not add to the burden placed on small businesses, it only relieves the burden placed on some businesses through granting exemptions.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., authorizes the Director of OMB to review certain information collection requests by Federal Agencies. Under OMB Control Number 2070-0021, OMB has approved a general information collection request submitted by EPA for purposes of collecting information for rulemakings on PCB exemption petitions, and for any recordkeeping or reporting conditions to PCB exemption petitions granted by EPA.

#### VI. Official Rulemaking Record

For the convenience of the public and EPA, all of the information originally submitted and filed in docket number OPTS-66002 (processing and distribution in commerce exemptions) is being consolidated into one docket number OPTS-66008. This final rule is a continuation of that docket under OPTS-66008F.

Public comments, the transcript of the rulemaking hearing, and submissions made at the rulemaking hearing, or in connection with it, will not be listed, because these documents are exempt from *Federal Register* listing under TSCA section 19(a)(3). A full list of these materials will be available on request from EPA's Environmental Assistance Division office listed under "FOR FURTHER INFORMATION CONTACT."

#### A. Previous Rulemaking Records

Official Rulemaking Record from "Polychlorinated Biphenyls; Exclusions, Exemptions and Use Authorizations; Final Rule." Docket No. OPTS-62053A, 53 FR 24206, June 27, 1988.

#### B. Support Documents

EPA is identifying the complete rulemaking record on the date of promulgation of the final rule, as prescribed by section 19(a)(3) of TSCA. Persons are encouraged to point out any omissions or errors in the record.

#### List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated

biphenyls, Reporting and recordkeeping requirements.

Dated: May 14, 1990.

Charles L. Elkins,  
Director, Office of Toxic Substances,  
Environmental Protection Agency.

Therefore, 40 CFR part 761 is amended as follows:

#### PART 761—[AMENDED]

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

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

2. By revising § 761.60 to read as follows:

#### § 761.60 Manufacturing, processing and distribution in commerce exemptions.

(a) The Administrator grants the following petitioner(s) an exemption for 1 year to process and distribute in commerce PCBs for use as a mounting medium in microscopy:

(1) McCrone Accessories & Components, Division of Walter C. McCrone Associates, Inc., 2820 South Michigan Avenue, Chicago, IL 60616.

(2) [Reserved]

(b) The Administrator grants the following petitioners an exemption for 1 year to process and distribute in commerce PCBs for use as a mounting medium in microscopy, an immersion oil in low fluorescence microscopy and an optical liquid:

(1) R.P. Cargille Laboratories, Inc., 55 Commerce Road, Cedar Grove, N.J. 07009.

(2) [Reserved]

(c) The Administrator grants the following petitioner(s) an exemption for 1 year to manufacture PCBs for use in small quantities for research and development:

(1) Accu-Standard, 25 Science Park, New Haven, CT. 06503.

(2) [Reserved]

(d) The Administrator grants the following petitioner(s) an exemption for 1 year to export PCBs for use in small quantities for research and development:

(1) Accu-Standard, New Haven, CT. 06503.

(2) [Reserved]

(e) The Administrator grants the following petitioner an exemption for one year to import (manufacture) into the U.S., small quantities of existing PCB fluids from electrical equipment for analysis:

(1) Unison Transformer Services, Inc., Tarrytown, N.Y. 10591, provided each of the following conditions are met:

(i) The samples must be shipped in 5.0 mL or less, hermetically sealed vials.

(ii) The exemption is limited to no more than 250 samples per year.

(iii) Unison makes quarterly inspections of its laboratories to ensure that proper safety procedures are being followed.

(iv) Unison annually notifies and describes to EPA its attempts to have samples analyzed abroad.

(2) [Reserved]

(f) The Administrator grants the following petitioner a class exemption to its members for 1 year to process and distribute in commerce non-porous transformer component parts which have been decontaminated of PCB residues and to buy and sell PCB transformers or PCB-contaminated transformers to which only double-rinsed, non-porous component parts have been added.

(1) Electrical Apparatus Service Association, 1331 Baur Boulevard, St. Louis, MO. 63123.

(2) [Reserved]

(g) The 1-year exemption granted to petitioners in paragraphs (a) through (e) of this section shall be renewed automatically so long as the petitioners notify EPA annually of any increase in the amount of PCBs to be processed and distributed, imported (manufactured), or exported or of any change in the manner of processing and distributing, importing (manufacturing), or exporting of PCBs and unless EPA initiates rulemaking to terminate the exemption.

[FR Doc. 90-11860 Filed 5-21-90; 8:45 am]  
BILLING CODE 6560-50-D

#### FEDERAL EMERGENCY MANAGEMENT AGENCY

##### 44 CFR Part 64

[Docket No. FEMA 6875]

#### Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final Rule.

**SUMMARY:** This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the Federal Register.

**EFFECTIVE DATE:** As shown in fifth column.

#### FOR FURTHER INFORMATION CONTACT:

Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street, SW., Room 416, Washington, DC 20472, (202) 646-2717.

#### SUPPLEMENTARY INFORMATION: The

NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the Federal Register that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and