

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 761**

(OPTS-66008F; TSH FRL-3434-1)

Polychlorinated Biphenyls; Manufacturing, Processing, and Distribution in Commerce Exemptions**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

SUMMARY: This proposed rule addresses twelve individual and class petitions for exemption from the prohibition against the manufacture, processing and distribution in commerce of polychlorinated biphenyls (PCBs). This proposed rule identifies four petitions which EPA proposes to deny and eight petitions which EPA proposes to grant. EPA hereby solicits comments on these proposed actions.

DATES: An informal hearing, if requested, will be held in Washington, DC, on October 24, 1988. For the exact time and location of the hearing, telephone EPA's TSCA Assistance Office listed under "FOR FURTHER INFORMATION CONTACT." Comments on this proposed rule and requests to participate in the informal hearing must be submitted by October 11, 1988. All requests to participate must include an outline of the topic(s) to be addressed, the amount of time requested for the opening statement, and the names of participants. The informal hearing is meant to provide an opportunity for interested persons to present additional information or to discuss new issues, not to repeat information already presented in written comments. Reply comments made in response to issues raised at the hearing must be submitted no later than one week after the date of that hearing.

ADDRESS: All comments should reference the docket number OPTS-66008F, and be sent in triplicate to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M St., SW., Washington, DC 20460.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part of 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. All written comments will be available for public inspection in Rm. NE-G004 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

Copies of this proposed rule can be obtained from the TSCA Assistance Office. Copies of the support documents for this rule can be obtained through the OTS Document Control Officer listed above.

SUPPLEMENTARY INFORMATION: The Toxic Substances Control Act (TSCA) requires that anyone who manufactures, processes, or distributes PCBs in commerce must petition EPA for an exemption. The regulations governing exemptions provide that EPA may set terms and conditions including recordkeeping and reporting requirements for granting an exemption.

Public reporting burden for this collection of information is estimated to average 7 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

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.

EPA's Interim Procedural Rules for Processing and Distribution in Commerce Exemptions describe the required content of processing and distribution in commerce exemption petitions and the procedures EPA follows in rulemaking on exemption petitions. Those rules were published in the *Federal Register* of May 31, 1979 (44 FR 31514) and are codified at 40 CFR 750.30 through 750.41.

B. History of This Rulemaking

EPA has received for consideration 12 new exemption petitions under TSCA section 6(e)(3)(B) which are the subject of this proposed 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 purposes of evaluating the exemption petitions. In addition, one petition requests approval to process and distribute in commerce PCBs for use as a mounting medium in microscopy; one petition requests an exemption to process and distribute in commerce PCBs for use as a mounting medium in microscopy in addition to processing and distributing in commerce PCBs for use as immersion oil in low fluorescence microscopy and as an optical liquid; one petitioner requested an exemption to manufacture and export PCBs in small quantities for research and development; one petitioner requested an exemption to import small quantities of PCBs for research and development; one petitioner requested an exemption to distribute in commerce inadvertently generated PCBs. Of the 12 petitions for exemptions, 4 of the petitions were previously granted exemptions, 4 of the petitions were previously granted exemptions for 1 year, effective August 23, 1984, as published in the *Federal Register* of July 10, 1984 (49 FR 28154); 1 was granted an exemption for 1 year, effective September 8, 1986, as published in the *Federal Register* of August 8, 1986 (51 FR 28556); and 1 was denied an exemption in a notice of final

action published in the *Federal Register* of August 29, 1985 (50 FR 35192).

In the final PCB Exemptions Rule, published in the *Federal Register* of July 10, 1984 (49 FR 28154), EPA acted on 109 pending exemption petitions and deferred action on the petition from Ward Transformer, Inc. (Ward Transformer). Also in the July 10, 1984 *Federal Register* (49 FR 28203), EPA issued a proposed rule-related notice. In that notice EPA requested that Ward Transformer submit additional information, and indicated that the Agency would take final action on the Ward Transformer petition after evaluating the additional information. In the August 29, 1985 *Federal Register* (50 FR 35192), EPA issued a notice of final action denying the Ward Transformer petition.

In the July 10, 1984 final PCB Exemptions Rule, EPA also revoked its earlier policy of allowing activities which were the subject of exemption petitions to continue until EPA acted to grant or deny the exemption petitions, as published in the *Federal Register* of January 2, 1979 (44 FR 108) and March 5, 1980 (45 FR 14247). As of the effective date (August 23, 1984) of the final rule published in the *Federal Register* of July 10, 1984, the Agency allows a petitioner, whose exemption request is granted, to manufacture, process, or distribute in commerce PCBs only for the period of time granted in the final rule (usually 1 year). When the exemption expires, a petitioner will not be permitted to engage in such activities, even if it renews its exemption request, until EPA has acted on that request.

EPA issued another final PCB Exemption Rule, acting on 22 exemption petitions, in the *Federal Register* of August 8, 1986 (51 FR 28556), after the publication of a proposed rule in the *Federal Register* of August 29, 1985 (50 FR 35182). That rule restated EPA's policy of not allowing the activities to continue beyond 1 year until EPA granted a new PCB exemption. The August 8, 1986 final PCB Exemptions Rule also encouraged those petitioners who were granted exemptions in the final rule who wish to renew their exemptions, to file a renewal request a minimum of 6 months before the expiration of their current exemptions, since EPA must act on petitions for exemption from the prohibitions on PCBs by rulemaking. EPA reiterates this recommendation for any petitioner granted exemptions in the final action following this proposed rule.

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 health or the environment against the benefits to society from granting or denying each petition. Specifically, EPA considers the following factors:

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

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

A. Effects of PCBs on Human Health and the Environment

In deciding whether to grant an exemption, EPA considers the effects of PCBs on human health and the environment, including the magnitude of PCB exposure to humans and the environment. The effects of PCBs are described in various documents that supported previous rulemaking and are a part of the rulemaking record for this proposed rule. Copies of these documents are available from EPA's TSCA Assistance Office at the address listed under "**FOR FURTHER INFORMATION CONTACT.**"

1. Health Effects

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

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

In addition, EPA finds that PCBs may cause reproductive effects and developmental toxicity in humans exposed to PCBs. Available data show that some PCBs have the ability to alter reproductive processes in mammalian species, sometimes even at doses that do not cause other signs of toxicity. Animal data and limited available

human data indicate that prenatal exposure to PCBs can result in various degrees of developmental toxic effects. Postnatal effects have been demonstrated on immature animals, following exposure to PCBs prenatally and via breast milk.

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

2. Environmental Effects

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

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

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

3. Risks

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

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

B. Benefits and Costs

The benefits to society of granting an exemption vary, depending on the activity for which exemption is

requested. The reasonably ascertainable costs of denying an exemption vary, depending on the individual petitioner. EPA has taken the benefits and costs into consideration when evaluating each exemption petition.

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 considered the kind of exemption the petitioner is requesting and whether the petitioner expended time and effort to develop or search for a 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.

EPA received one exemption petition to process and distribute in commerce, PCBs for purposes of servicing customers' PCB Transformers and PCB-contaminated transformers and introducing its PCB-contaminated fluid into customers' PCB Transformers or PCB-contaminated transformers. The petitioner needs an exemption to engage in this activity. In contrast, a person does not need an exemption to drain PCB fluid or PCB-contaminated fluid from a customer's transformer and return it later to the same transformer. Nor does a person need an exemption to introduce PCB fluid he already owns into his own PCB Transformer or to introduce PCB-contaminated fluid he already owns into his own PCB Transformer or PCB-contaminated transformer for purposes of servicing. These activities are authorized by EPA's Electrical Equipment Rule under 40 CFR 761.30(a), published in the Federal Register of August 25, 1982 (47 FR 37342), and need no exemption, as there is no processing or distribution in commerce of PCBs. Nor does a person need an exemption to introduce non-PCB fluid (i.e., fluid containing less than 50 parts per million (ppm) PCBs) into any transformer.

1. Electrical Apparatus Service Association

On August 22, 1985 the Electrical Apparatus Service Association (EASA) requested a renewal of its 1-year exemption for its 265-member service companies to process and distribute in commerce PCB-contaminated fluid for the purpose of servicing customers' transformers (PDE 77). EPA granted EASA a 1-year exemption in July 1984 to engage in substantially similar activities. EPA proposes to deny petitioner's request for another 1-year exemption because the petitioner failed to meet the statutory requirement of good faith efforts as required by section 6(e)(3)(B)(ii) of TSCA. EASA also applied under this same petition to process and distribute in commerce PCBs in buying and selling transformers. This is considered a separate action from processing and distributing in commerce PCBs for purposes of servicing customer's transformers, and is discussed separately under Unit IV. B.1.

a. *Background.* In its July 10, 1984, action on the original EASA petition, the Agency concluded that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that EASA had made good faith efforts to substitute non-PCB fluid for PCB-contaminated fluid. EPA also concluded that granting an exemption would avoid costs of approximately \$10 million (approximately \$37,500 per company). EPA also believed that granting EASA a 1-year exemption would give EASA the time it needed to inform its members of what they must do to comply with the PCB regulations, and allow EASA members time to phase out those PCB-related activities which require exemption.

i. *Unreasonable risk finding.* As discussed earlier in Unit II., EPA specifically considers the effects of PCBs on human health and the environment, the benefits to society of granting an exemption, and the reasonably ascertainable costs to the petitioner of denying an exemption petition. In the prior evaluation of unreasonable risk, EPA found that granting EASA an exemption would not present an unreasonable risk because EPA agreed that: (1) The amount of PCBs to be processed and distributed in commerce in servicing customer's transformers was a relatively small percentage of the PCBs then in circulation in PCB-contaminated transformers; (2) the transformers would be serviced by EASA members in accordance with the regulatory

requirements of 40 CFR 761.30(a)(2); (3) granting the exemption would avoid costs of approximately \$10 million (\$37,500 per company); and (4) granting an exemption would benefit society by helping small utilities continue to provide efficient and reliable electrical service throughout the United States. Thus, EPA concluded the EASA had shown that granting a 1-year exemption would not present an unreasonable risk of injury to health or the environment.

ii. *Good faith efforts finding.* In the prior evaluation of good faith efforts, EPA concluded that EASA had made good faith efforts to substitute non-PCB fluid for PCB-contaminated fluid. EASA stated in its earlier petition that it had attempted through mailings and seminars to inform its members of the changes they must make in their operations to comply with the PCB regulations. However, EASA contended that additional time was needed to fully inform EASA members about what activities are allowed in the absence of an exemption. EPA concluded that a 1-year exemption would allow EASA members enough time to implement the necessary phase out of those PCB-related activities which require exemption. Thus, EPA concluded that EASA had met the statutory requirement of good faith efforts and a 1-year exemption would give EASA the additional time they needed. Therefore, EPA granted EASA an exemption for 1 year. However, the Agency stated that, "Any petitioner who requests a further exemption after its 1-year exemption expired would have to overcome the substantial burden of showing why it did not eliminate its inventory of PCBs."

b. *Rationale for proposed decision to deny.* EPA proposes to deny EASA's new petition for exemption because, although EASA has met the statutory requirement of no unreasonable risk as required by section 6(e)(3)(B)(i) of TSCA, EASA has failed to meet the statutory requirement of good faith efforts as required by section 6(e)(3)(B)(ii) of TSCA.

i. *Unreasonable risk finding.* EPA reaffirms its conclusion made in the July 10, 1984 PCB Exemptions Rule, that EASA has met the statutory requirement of no unreasonable risk as required by section 6(e)(3)(B)(i) of TSCA. EPA sees no significant changes since EASA's earlier petition for exemption to necessitate a change in EPA's conclusion of no unreasonable risk. The estimated cost of denial would be approximately \$10 million (approximately \$37,000 per company). This is the same estimate used in the July 10, 1984, PCB Exemptions Rule (PCB

Exemption Petitions Economic Impact Analysis, April 1984). In addition, EPA agrees that the amount of PCBs to be processed and distributed in commerce in servicing customers' transformers is still a relatively small percentage of the PCB now in circulation in PCB-contaminated transformers, and since EASA members must continue to service customers' transformers in accordance with the restrictions of 40 CFR 761.30(a)(2), there will be no unreasonable risk of injury to health or the environment.

ii. *Good faith efforts finding.* EPA concludes that EASA has failed to meet the statutory requirements of good faith efforts. EPA considers several factors in determining whether a petitioner has demonstrated a good faith effort (discussed in Unit III.). One such factor is whether the petitioner expended time and effort to develop or search for a substitute. However, 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 in reducing PCBs, EASA fails to indicate any effort to reduce the amount of PCBs in inventory. EPA stated in the July 10, 1984, PCB Exemptions Rule that, although EPA was granting EASA an exemption, the Agency strongly urged EASA to eliminate its remaining PCB inventories.

EASA's present petition shows virtually no change in the estimated amount of PCBs to be processed, distributed in commerce, or used during the exemption period. In its earliest petition (1979), EASA reported 442.2 lbs. of PCBs a year as the estimated amount of PCBs to be processed, distributed in commerce, or used during the exemption period. EASA updated this figure to 1,127 lbs. of PCBs per year in its 1984 updated petition. In its current petition, EASA continues to report 1,127 lbs. of PCBs a year as the estimated amount of PCBs to be processed, distributed in commerce, or used during the exemption period.

Further, EASA shows that the number of PCB-contaminated transformers to be serviced under the requested exemption has remained the same since the 1984 updated petition for exemption. In both the 1984 updated petition and the current 1985 petition for exemption, EASA estimated 413,400 pole-mounted transformers and 402 substation transformers to be served under the requested exemption, thus showing no reduction during the period that the last exemption was in effect.

In addition, in granting the earlier petition in the July 10, 1984 PCB

Exemptions Rule, EPA concluded that a 1-year exemption would allow sufficient time for EASA to inform its members of what they must do to comply with the PCB regulations, and also give EASA members time to phase out those PCB-related activities which require an exemption. However, EASA has requested that EPA allow its members another year to implement the regulation. EASA contends that although diligent efforts were made, through newsletters, handbooks, and seminars, to notify its members of the activities allowed by the PCB regulations in the absence of an exemption, the members still need more time to implement the procedures necessary to come into full compliance with the regulatory requirements.

EPA believes that although EASA can be commended for its diligent notification efforts, EASA has had sufficient time to complete both the notification of members and the implementation of the necessary procedures. EASA was given a full year exemption, from August 23, 1984 through August 23, 1985. To date, EASA has had over 3 years to notify their members and to implement the regulation.

EPA concludes that, EASA has the burden to demonstrate good faith efforts and has not adequately met that statutory requirement. Therefore, EPA proposed to deny the Electrical Apparatus Service Association's petition for exemption to process and distribute in commerce PCBs for purposes of servicing customers' transformers based on the conclusion that no reduction in the members' PCB inventory has been demonstrated since the last exemption was granted.

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

EPA received two exemption requests from petitioners who want to process and distribute in commerce PCBs in buying and selling used PCB transformers and PCB-contaminated transformers. Each of these petitioners is engaged in one or more of the following activities for which an exemption is generally required: (1) Buying and selling PCB transformers or PCB-contaminated transformers without introducing PCBs into these transformers; (2) buying PCB transformers or PCB-contaminated transformers, introducing non-PCB fluid into these transformers, and then selling them before they have been reclassified as non-PCB transformers in accordance with the provisions of 40 CFR 761.30(a)(2)(v); and (3) buying PCB Transformers or PCB-contaminated

transformers, introducing PCB fluid or PCB-contaminated fluid into these transformers (including fluid originally taken from and returned to the same transformer), and then selling them. The petitioners who introduce PCBs into these transformers need an exemption because they are processing PCBs, as defined in section 3(10) of TSCA and 40 CFR 761.3. The petitioners who sell these transformers need an exemption, because they are distributing in commerce PCBs, as defined in section 3(4) of TSCA and 40 CFR 761.3.

Not all of these activities for which EPA received exemption petitions require exemption. EPA regulations at 40 CFR 761.20(c)(1) allow a person to distribute in commerce used PCB transformers and PCB-contaminated transformers without the need for an exemption, provided that the following conditions are met: (a) The transformer was originally distributed in commerce before July 1, 1979, for purposes other than resale; (b) the transformer is totally enclosed (i.e., intact and nonleaking) when it is distributed in commerce; (c) no PCBs are introduced into the transformer (including PCB fluid or PCB-contaminated fluid originally removed from and returned to the same transformer); and (d) the transformer is distributed in commerce only within the United States. Activities described in Units IV.B.1. and 2. Of this preamble do not require an exemption if each of the conditions listed above ((a), (b), (c), and (d)) is met. Unless each of these conditions is met, processing or distributing in commerce of PCBs in buying and selling used PCB transformers and PCB-contaminated transformers is prohibited without an exemption. The EPA findings on the petitions from EASA, Ward Transformer, and Jerry's Electric which are discussed in Units IV.B.1., 2., and 3., pertain to those portions of the petitioners' activities which require exemption from the prohibitions on the processing and distribution in commerce of PCBs.

EPA proposes to deny one exemption petition, for processing and distributing in commerce PCBs in buying and selling PCB-contaminated transformers, because EPA has concluded that the petitioner has failed to meet the statutory requirement of good faith efforts as required by section 6(e)(3)(B)(ii) of TSCA.

EPA proposes to grant two petitions, for processing and distributing in commerce PCBs in buying and selling used transformers. One petitioner has provided documentation which: (i) Substantiates its claims of good faith

efforts as required by section 6(e)(3)(B)(ii) of TSCA; and (ii) verifies that the PCBs will be handled and stored in such a manner as to pose no unreasonable risk, as required by section 6(e)(3)(B)(i) of TSCA. The other petitioner has also demonstrated good faith efforts and no unreasonable risk as required by section 6(e)(3)(B), (i) and (ii) of TSCA.

1. Electrical Apparatus Service Association

On August 22, 1985, the Electrical Apparatus Service Association requested a renewal of its 1-year exemption for its 265-member service companies to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers (PDE 78). EPA granted EASA a 1-year exemption in July 1984 to engage in substantially similar activities. EPA proposes to deny this petitioner's request for another 1-year exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers, because EASA failed to meet the statutory requirement of good faith efforts as required by section 6(e)(3)(B)(ii) of TSCA. EASA also applied under this same petition to process and distribute in commerce PCBs for purposes of servicing customers' transformers. This action is discussed separately under Unit IV.A.1.

a. *Background.* In the July 10, 1984, PCB Exemptions Rule, EPA granted to the members of EASA, except for Ward Transformer Co., Inc., an exemption for 1 year to process and distribute in commerce PCB-contaminated fluids in buying and selling PCB-contaminated transformers.

EPA concluded that granting an exemption would not result in an unreasonable risk of injury to health or the environment and further found that EASA made good faith efforts to substitute non-PCBs for PCBs. In addition, EPA believed that granting a 1-year exemption would give EASA the time it needed to inform its members of what they must do to comply with the PCB regulations, thereby allowing EASA members time to phase out their PCB-related activities that require exemption. EPA also concluded that the cost incurred by EASA due to a denial of its petition would be approximately \$160 for an average size mineral oil transformer and \$4,000 for an average size PCB transformer. Since the costs of replacing the similar sized mineral oil and PCB transformers are approximately \$1,600 and \$13,000, respectively, these incremental costs would amount to about 10 to 30 percent

of the cost of replacements. Therefore, EPA estimated that depending on the purchase price and resale value of used transformers, the additional costs resulting from denial of the petition might have rendered a portion of this buying and selling activity unprofitable.

i. *Unreasonable risks finding.* In EPA's evaluation of unreasonable risk in July 1984, EPA concluded that: (1) The amount of PCBs to be processed and distributed in commerce in buying and selling PCB-contaminated transformers was a relatively small percentage of the PCBs in circulation in PCB-contaminated transformers; (2) the transformers would be serviced in accordance with the requirements of 40 CFR 761.30(a)(2); (3) granting an exemption would avoid some costs to the petitioner, although the costs were not quantified; and (4) granting an exemption would benefit society by allowing small utilities and industrial companies to replace burned-out transformers quickly, which would provide efficient and reliable electrical service throughout the United States. Thus, EPA concluded that granting the EASA petition would not present an unreasonable risk of injury to health or the environment.

ii. *Good faith efforts finding.* In EPA's evaluation of good faith efforts in July 1985, EPA concluded that EASA made good faith efforts to substitute non-PCB fluid for PCB-contaminated fluid. EPA also concluded that although EASA had attempted, through mailings and seminars, to inform its members of the changes they must make in their operations to comply with the PCB regulations, a 1-year exemption would allow EASA members time to phase out their PCB-related activities that require exemption. Thus, EPA concluded that EASA had met the statutory requirement of good faith efforts and granted an exemption for 1 year.

b. *Rationale for proposed decision to deny.* EPA proposes to deny EASA's new petition for exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers because, although EASA has met the statutory requirement of no unreasonable risk as required by section 6(e)(3)(B)(i) of TSCA, EASA has failed to meet the statutory requirement of good faith efforts as required by section 6(e)(3)(B)(ii) of TSCA.

i. *Unreasonable risk finding.* EPA reaffirms its conclusion, made in the July 10, 1984, PCB Exemption Rule, that EASA has met the statutory requirement of no unreasonable risk as required by section 6(e)(3)(B)(i) of TSCA. EPA sees no significant changes since EASA's earlier petition for

exemption to necessitate a change in EPA's conclusion of no unreasonable risk made in the July 10, 1984, PCB Exemptions Rule. EPA agrees that the amount of PCBs to be processed and distributed in commerce in buying and selling PCB-contaminated transformers is a relatively small percentage of the PCBs now in circulation in PCB-contaminated transformers. Furthermore, since EASA members must service customer's transformers in accordance with the requirements of 40 CFR 761.30(a)(2), there would be no unreasonable risk of injury of health or the environment. EPA estimated that the incremental costs of denial would be a maximum of \$160 for an average size PCB-contaminated transformer, assuming all of the transformers fluid had to be disposed of and replaced. Given that the costs of replacing the similarly sized PCB-contaminated transformer is approximately \$1,600, the incremental costs amount to about 10 to 30 percent of replacement costs.

ii. *Good faith efforts finding.* EPA concludes that EASA has failed to meet the statutory requirement of good faith efforts as required by section 6(e)(3)(B)(ii) of TSCA.

EPA considers several factors in determining whether a petitioner has demonstrated a good faith effort (discussed in Unit III.). One such factor is whether the petitioner expended time and effort to develop or search for a substitute. However, 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. A reduction in inventory is an indication of efforts to substitute non-PCB material for PCBs. EASA has failed to demonstrate any effort to reduce its inventory nor has EASA indicated why it was not feasible to reduce its inventory, thus failing to meet the burden of showing specifically what it did to substitute non-PCB material for PCBs or why it was not feasible to substitute non-PCBs for PCBs.

Although EASA was previously granted an exemption (49 FR 28154), EPA stated at the time that, "Any petitioner who requests a further exemption after its 1-year exemption expires will have to overcome the substantial burden of showing why it did not eliminate its inventory of PCBs." EASA has filed for another 1-year exemption and has failed to comply with the good faith efforts test. In its current petition for exemption, EASA indicates that its estimated amount of processed transformer oil containing PCBs has remained the same since the association's last exemption request.

Therefore, EPA concludes EASA has not shown good faith efforts to reduce its inventory of PCBs or overcome the substantial burden of showing why it did not eliminate its inventory of PCBs as discussed in EASA's petition request to service customer's transformers (see Unit IV.A.1.a.ii.). Therefore, because the estimated amount of PCBs to be processed, distributed in commerce, or used during the exemption period remains the same as in the last exemption petition request, and EASA has shown no effort to reduce this amount, thus failing to show good faith efforts to find a substitute for PCBs (e.g., eliminating its inventory of PCBs), EPA proposes to deny EASA's petition for exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers.

2. Ward Transformer

On July 25, 1985, The Ward Transformer Company (Ward Transformer), a member of EASA, requested a 1-year exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers (PDE 294). EPA proposes to grant Ward's petition for exemption provided petitioner meets certain criteria including continued compliance with a Consent Judgment and maintaining certain records and submitting certain reports, as outlined in detail in Unit IV.B.2.b.ii.

a. *Background.* In the July 10, 1984, PCB Exemption Rule, EPA deferred final action on Ward transformer's exemption petition in order to gather more information on the issue of unreasonable risk of injury to health or the environment. In the proposed rule-related notice published in the *Federal Register* of July 10, 1984 (49 FR 28203), EPA specifically solicited information from Ward Transformer on the issue of unreasonable risk, stating that Ward Transformer could allay EPA's concern that granting the petition could result in an unreasonable risk of injury to health or the environment by submitting clear and convincing evidence to the contrary.

In the August 29, 1985, Notice of Petition Denial (50 FR 35192), EPA denied the Ward Transformer petition for an exemption to buy and sell used PCB/contaminated transformers based on EPA's evaluation of the information submitted by the petitioner in response to the proposed rule-related notice, and determined that Ward Transformer had failed to provide clear and convincing evidence that granting an exemption would not result in an unreasonable risk of injury to health or the environment.

i. *Unreasonable risk finding.* Since Ward Transformer would be handling,

storing, and disposing of PCB-contaminated fluid were EPA to grant an exemption, EPA concluded that Ward transformer's compliance with the storage for disposal regulations (40 CFR 761.65) was a significant factor in determining whether granting the exemption would result in an unreasonable risk of injury to health or the environment. The information submitted by Ward Transformer in response to the proposed rule-related notice of July 1984 led EPA to question Ward Transformer's compliance with the storage for disposal requirements under 40 CFR 761.65(a). Therefore, EPA concluded in the August 29, 1985, Notice of Petition Denial that Ward Transformer had not provided clear and convincing evidence that granting an exemption would not result in an unreasonable risk of injury to health or the environment. In particular, EPA was concerned that petitioner had accumulated, prior to July 1, 1982, 18,000 to 20,000 gallons of PCB-contaminated fluid which it maintained was being stored in bulk storage containers for reuse, although Ward Transformer maintained that it did and would not use PCB-contaminated fluid in servicing transformers. Ward Transformer stated that the PCB-contaminated fluid was being stored for treatment to below 2 ppm. Since such treatment constitutes disposal of PCBs, the storage of the PCB-contaminated fluid in bulk storage tanks beginning before July 1, 1982, was not in compliance with 40 CFR 761.65 which required that all PCBs stored prior to January 1, 1983, be disposed of by January 1, 1984 (after January 1, 1983, all PCBs were to be disposed of within 1 year of the date PCBs were placed into storage for disposal). EPA placed time limits on the storage of PCBs for disposal due to the concern that facilities would store PCBs for indefinite periods of time, increasing the likelihood of leaks or accidental releases of PCBs. Thus, EPA determined that granting an exemption to Ward Transformer could result in increased risks of human and environmental exposure to PCBs. In addition, EPA concluded that the cost of denying Ward Transformer's petition was not sufficient to outweigh the potential risks of injury to health and the environment. Therefore, EPA was unable to make the statutory finding of no unreasonable risk as required by section 6(e)(3)(B)(i) of TSCA.

ii. *Good faith efforts finding.* The information provided by the petitioner in response to the July 10, 1984, proposed rule-related notice indicated a continuing failure to act in good faith compliance with applicable regulations on the storage of PCBs for disposal.

Thus, in the 1985 Notice of Petition Denial, EPA concluded that Ward Transformer had not met the statutory requirement of good faith efforts as required by section 6(e)(3)(B)(ii).

b. *Rationale for proposed decision to grant.* EPA proposes to grant Ward Transformer's present exemption petition to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers. This decision is based upon information submitted by the petitioner which allays the Agency's concern about the petitioner's good faith efforts, as well as the concern that granting an exemption to Ward Transformer could result in unreasonable risks. However, the exemption will only remain in effect provided Ward Transformer continues to meet certain criteria as outlined by EPA in Unit IV.B.2.b.ii.

According to Ward's petition for exemption, it has made the decision to dispose of its stored PCB-contaminated fluid rather than treat it for reuse. The petitioner provided EPA with copies of manifests and certifications of disposal from an EPA permitted disposal company, accounting for all of the fluid which the petitioner had been storing at the time the Agency denied its earlier petition. In addition, a statement signed by Ward's counsel indicated that, as of November 1985, Ward had no PCB or PCB-contaminated fluid in storage for disposal. Petitioner took this action in response to EPA's concerns about unreasonable risks presented by lengthy storage of the fluid and potential violations of the PCB disposal regulations.

i. *Unreasonable risk finding.* Ward Transformer is engaged in the same types of activities as other EASA members. EPA has found that those activities do not pose an unreasonable risk of injury to health or the environment (see Units II and IV.A.1.a.i.). Therefore, EPA concludes that granting Ward Transformer an exemption would not result in an unreasonable risk of injury to health or the environment since all PCB-contaminated fluid in storage for disposal has been disposed of in accordance with the disposal regulations.

ii. *Good faith efforts finding.* Documents submitted in its previous exemption petition showed that Ward Transformer entered into a contractual agreement of the disposal of 1,815 gallons of PCB fluid and 1,265 gallons of PCB-contaminated solids which were collected prior to July 1, 1982, EPA estimated in the August 29, 1985, Notice of Petition Denial that approximately

16,000 to 18,000 gallons of fluid which had been collected prior to July 1, 1982, remained in storage for disposal at the Ward facility. The documents submitted by Ward Transformer in its current petition show evidence of disposal of some 18,200 gallons of PCBs. Based upon these documents, the Agency concludes that Ward Transformer had demonstrated that it has eliminated its inventory of PCB-contaminated fluid in storage for disposal, thus satisfying an essential test in determining whether one has demonstrated good faith efforts.

Therefore, EPA proposes to grant Ward Transformer's petition for exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers. In proposing to grant this exemption, EPA presumes Ward Transformer's continued commitment to comply with all of the PCB regulations at 40 CFR Part 761, and to operate within the limits of its exemption should it be granted in the final rule. In addition, EPA believes that although the Agency is proposing to grant the petitioner's exemption, Ward Transformer must meet certain additional conditions to maintain their exemption. The conditions are that: (1) Ward Transformer must continue to comply with all terms and conditions of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) Consent Decree identified as *U.S. v. Ward*, et al. No. 83-63-CIV 5 (E.D.N.C. June 13, 1986); (2) Ward Transformer must maintain complete records relating to labeling, storage, and disposal of PCBs and PCB Items pursuant to TSCA. In addition to complying with the recordkeeping and reporting requirements under 40 CFR Part 671, Subpart J, Ward Transformer must comply with all applicable conditions of § 761.80(e)(1).

EPA concludes that Ward Transformer has adequately met the statutory requirements of no unreasonable risk and good faith efforts as required by section 6(e)(3)(b) (i) and (ii) of TSCA. Therefore, EPA proposes to grant Ward Transformer's petition for exemption for 1 year to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers. Should a 1-year exemption be granted to Ward Transformer in the final rule, Ward Transformer must meet the conditions set forth in § 761.80(e)(1).

3. Jerry's Electric, Inc.

On January 21, 1987, Jerry's Electric, Inc. (Jerry's Electric) requested a 1-year exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers (PDE-133). Specifically, Jerry's Electric

requests an exemption to rebuild drained PCB-contaminated transformers. In July 1984, EPA denied Jerry's Electric's earlier petition for exemption to do essentially the same activities. EPA proposes to grant petitioner's current request for a 1-year exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers.

a. *Background.* In the July 10, 1984 PCB Exemptions Rule, EPA denied Jerry's Electric an exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers. In the proposed rule mailed to the petitioners, EPA specifically solicited information about the issue of unreasonable risk of injury to health and the environment and good faith efforts to substitute non-PCBs for PCBs. Since Jerry's Electric, among other petitioners, failed to respond, EPA was unable to conclude that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that the petitioners made good faith efforts to substitute non-PCBs for PCBs. Thus, EPA denied, along with several other petitions, Jerry's Electric's petition to process and distribute in commerce PCBs in buying and selling used PCB-contaminated transformers.

b. *Rationale for proposed decision to grant.* EPA proposes to grant Jerry's Electric's new petition for exemption to process and distribute in commerce PCB's in buying and selling PCB-contaminated transformers since this petitioner has met the statutory requirements of no unreasonable risk and good faith efforts as required by section 6(e)(3)(B) (i) and (ii) of TSCA.

i. *Unreasonable risk finding.* EPA concluded that Jerry's Electric has shown that granting an exemption would not result in an unreasonable risk of injury to health or the environment. EPA estimates that the amount of PCBs to be processed and distributed in commerce in buying and selling PCB-contaminated transformers is a relatively small percentage of the PCBs now in circulation. Since Jerry's Electric estimates that only 10 percent of the rebuildable transformers are PCB-contaminated transformers, it estimates that only approximately 450 PCB-contaminated transformers will need to be rebuilt. Furthermore, since Jerry's Electric is purchasing already drained units for rebuilding, the risk of exposure due to normal leaks and spills in handling PCBs is mitigated. In addition, since they are required to service these transformers in accordance with the requirements of 40 CFR 761.30(a)(2),

there will be no unreasonable risk of injury to health or the environment. EPA also concluded that granting the exemption will benefit society by allowing small utilities nation-wide to replace burned-out transformers quickly, which will provide efficient and reliable electrical service throughout the United States.

ii. *Good faith efforts findings.* EPA concludes that Jerry's Electric has met the statutory requirement of good faith efforts as required by section 6(e)(3)(B)(ii) of TSCA. Section 6(e)(3)(B)(ii) of TSCA requires petitioners to make good faith efforts to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for PCBs.

The petition submitted by Jerry's Electric reveals that all rebuilt units will be filled with new insulating oil that has been tested and found to contain less than 1.0 ppm of PCBs. Thus, the substance that the petitioner proposes to use is a chemical substance which will not present an unreasonable risk of injury to health or the environment. Petitioner has made good faith efforts to substitute non-PCBs for PCBs.

EPA concludes that Jerry's Electric has adequately met the statutory requirements of no unreasonable risk and good faith efforts as required by section 6(e)(3)(B) (i) and (ii) of TSCA. Therefore, EPA proposes to grant Jerry's Electric's petition for exemption for 1 year to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers.

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. TSCA generally prohibits the manufacture, processing, distribution in commerce, and use of PCBs. EPA issued a final rule published in the *Federal Register* of July 10, 1984 (49 FR 28172) (the "Uncontrolled PCB Rule"), prescribing conditions under which certain manufacturing processes were excluded from the TSCA prohibitions, and prescribing conditions on the use of PCBs in hydraulic and heat transfer systems.

The Agency recently clarified the status of these activities by affirming that the existing regulations indeed prohibit these activities, unless specifically excluded or otherwise allowed by regulation. However, EPA published in the Federal Register of June 27, 1988 (52 FR 24206), a final amendment which would exclude the majority of these activities from regulation.

This rule amended the existing regulations by generally excluding from the TSCA section 6(e) prohibitions the processing, distribution in commerce, and use of products containing less than 50 ppm PCB concentration, provided these products were legally manufactured, processed, distributed in commerce, or used, prior to October 1, 1984. The term "legally," as used in this exclusion, includes activities allowed by EPA by regulation, by exemption petition, by settlement agreement, or pursuant to other Agency-approved programs.

As explained in the June 27, 1988, amendment, EPA cannot individually identify and assess every conceivable type of product contaminated at these very low PCB levels. EPA therefore adopted in the June 27, 1988, amendment to the Uncontrolled PCB Rule, a generic exclusion, based upon the Agency's determination that the use, processing, and distribution in commerce of products with less than 50 ppm PCB contamination will not generally present an unreasonable risk of injury to health or the environment. EPA specifically excluded from the ban on the processing and distribution of PCB products, those products containing certain "old" or "legal" PCB's at concentrations of less than 50 ppm. Therefore, EPA determined that an exemption would not be required to process and distribute products that contain the "old" excluded PCBs which appear in concentrations less than 50 ppm.

1. General Motors Corporation

On December 22, 1986, General Motors Corporation (General Motors) submitted two petitions for exemptions to distribute in commerce PCBs for use within the United States, and to distribute in commerce PCBs for export from the United States. General Motors is requesting an exemption to distribute in commerce PCBs found in die casting machinery and trim presses, and in hydraulic, heat transfer, and other miscellaneous equipment in use or in storage for reuse. The equipment has been tested and found to contain less than 50 ppm PCBs. EPA proposes to grant both of General Motors' petitions for exemption because EPA determined,

in the July 10, 1984, final Uncontrolled PCB Rule and the June 27, 1988 final amendment to the Uncontrolled PCB Rule (49 FR 28172 and 53 FR 24206, respectively), that the use of PCBs in hydraulic and heat transfer fluid at concentrations of less than 50 ppm would not pose an unreasonable risk. Since the amendment to the Uncontrolled PCB rule was published in the Federal Register on June 27, 1988 (53 FR 24206), General Motors will no longer require an exemption to process and distribute in commerce its equipment containing less than 50 ppm PCBs. EPA proposes to grant both of General Motors' exemption to: (i) Distribute in commerce PCBs for use within the United States; and (ii) distribute in commerce PCBs for export from the United States.

a. Unreasonable risk: Distribution in commerce within the United States. In the July 10, 1984, Rule, EPA concluded that the risks associated with the use of PCBs at the concentrations of less than 50 ppm are outweighed by the benefits of the continued use of the contaminated hydraulic and heat transfer systems, and the costs that are avoided by not requiring the further removal of the PCBs remaining in these systems at less than 50 ppm after July 1, 1984. Therefore, EPA concluded that authorizing the use of PCBs in these systems at concentrations of less than 50 ppm would not present an unreasonable risk of injury to health or the environment. EPA has considered the risks associated with the continued use of this equipment in authorizing the use of systems containing less than 50 ppm and found that no unreasonable risks would result. Although EPA has expressed some concern in the past that possible leaks and spills from this equipment during distribution in commerce may pose unreasonable risks, EPA determined, in the August 8, 1986, rule, that if equipment is drained of all free flowing liquid prior to distribution, no unreasonable risks will result.

General Motors states that should EPA grant their request to distribute in commerce this equipment, which has been tested and shown to contain less than 50 ppm PCBs, all free flowing liquid will be drained and outside surfaces will be cleaned prior to distribution in commerce. Thus, EPA concludes that there is no unreasonable risk of injury to health or the environment by granting General Motors' petition for exemption to distribute in commerce, within the United States, this drained equipment previously contaminated with less than 50 ppm PCBs.

b. Unreasonable risk: Export. The Agency generally treats petitions for exemption to export PCBs more stringently than petitions 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 concludes that these concerns are mitigated in the export of equipment contaminated with less than 50 ppm PCBs, and drained of all free flowing liquid before their distribution in commerce. EPA has considered the risks associated with the continued use of this equipment in authorizing the use of systems containing less than 50 ppm PCBs and found that no unreasonable risks would result. EPA's concerns about possible leaks and spills resulting from distribution in commerce are mitigated in this instance since all equipment is drained of all free flowing liquid. Further, in the July 10, 1983, rule, EPA included provisions that authorized the use of PCBs in hydraulic and heat transfer systems at concentrations less than 50 ppm for the remainder of their useful lives. General Motors is proposing to export only equipment that has been tested and shown to contain less than 50 ppm PCBs that has been drained of all free flowing liquids. Under 40 CFR 761.20(b)(2), EPA allows the export of PCBs at concentrations less than 50 ppm, for purposes of disposal. Thus, EPA's concern about disposal capabilities in other countries, for equipment contaminated with less than 50 ppm, is mitigated. EPA finds that no unreasonable risks of injury to health or the environment would result in granting this exemption. Therefore, EPA proposes to grant General Motors' petition for exemption to export equipment containing less than 50 ppm PCBs.

c. Good faith efforts finding. As discussed in Unit III. of this preamble, section 6(e)(3)(B)(ii) of TSCA requires petitioners to demonstrate good faith efforts to substitute non-PCBs for PCBs. Petitioner has already tested and found that the PCB contaminated level is less than 50 ppm in the equipment that petitioner wishes to distribute in commerce. As determined in the July 10, 1984, rule, the elimination of PCBs from contaminated hydraulic and heat transfer systems may not be technically feasible through existing retrofill technologies. For reasons related to the internal geometry and operating and design characteristics of these systems, PCB residues tend to persist despite draining and retrofilling.

General Motors has met the statutory requirements of good faith efforts as required by TSCA section 6(e)(3)(B)(ii).

General Motors states it has tested and found that all equipment that would be distributed in commerce in the United States and abroad, contains a concentration of less than 50 ppm PCBs. Further, General Motors states that all equipment would be drained of free flowing liquid and the outside surfaces cleaned prior to distribution in commerce.

Therefore, EPA proposes to grant General Motor's two exemptions to: (1) Distribute in commerce within the United States equipment contaminated with less than 50 ppm PCBs; and (2) export equipment contaminated with less than 50 ppm PCBs. However, General Motors does not require an exemption for these activities since the June 27, 1988 Uncontrolled PCB rule became final allowing the processing and distribution in commerce of excluded PCB products as defined in § 761.3.

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 their form, structure, and optical properties, as they appear relative to the optical properties of PCBs. EPA has authorized the use of PCBs as a mounting medium in microscopy.

The Use Authorization Rule published in the Federal Register of July 10, 1984 (49 FR 28193), authorized the indefinite use of PCBs as a mounting medium in microscopy for all purposes, the indefinite use of PCBs as an immersion oil in low fluorescence microscopy, and the indefinite use of PCBs as an optical liquid. Despite these use authorizations, persons wishing to process and distribute in commerce PCBs for this purpose must petition for an exemption, as stated in 40 CFR 761.30(k).

1. *McCrone Accessories & Components, Division of Walter C. McCrone Associates, Inc.* On June 25, 1985, McCrone Accessories & Components, a Division of Walter C. McCrone Associates, Inc. (McCrone), petitioned for an exemption to process and distribute in commerce PCBs for use as a mounting medium in microscopy (PDE 149). McCrone's petition is in the form of a request for renewal of an exemption granted in July 1984 to engage in substantially similar activities for a period of 1 year. EPA proposes to deny

this petitioner's request for another 1-year exemption because the petitioner has failed to meet the statutory requirements of good faith efforts as required by section 6(e)(3)(B)(ii) of TSCA.

a. *Background.* In the July 10, 1984, PCB Exemptions Rule (49 FR 28354), EPA granted McCrone's earlier petition for 1 year to process and distribute in commerce PCBs for use as a mounting medium in microscopy for all purposes. EPA concluded that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that McCrone met the statutory requirement of good faith efforts.

i. *Unreasonable risks finding.* In McCrone's previous exemption petition, EPA concluded that granting McCrone an exemption would not result in an unreasonable risk of injury to health or the environment. EPA concluded this after taking into consideration the effects on human health and the environment, the potential for exposure to PCBs, the benefits of using PCBs, the availability of substitutes, and the economic impact of various regulatory options, as discussed in the July 10, 1984, Use Authorization Rule.

EPA also concluded that granting McCrone an exemption would not present an unreasonable risk because McCrone would process PCBs in small quantities and the risk of exposure to humans and the environment would be minimized by the small quantities of PCBs used in each application, by the viscosity of the PCBs, and by the careful handling procedures typical of laboratory work. In addition, EPA concluded that granting an exemption would benefit society by allowing specialized microscopy work to continue.

ii. *Good faith efforts finding.* In EPA's evaluation of good faith efforts, EPA concluded that McCrone met the statutory requirement of good faith efforts. EPA was persuaded at that time that there were no adequate substitutes for PCBs for use as a permanent mounting medium in microscopy in some relatively rare instances, such as preserving crime scene evidence. Thus, EPA concluded that McCrone had met the statutory requirement of good faith efforts and granted the exemption.

b. *Rationale for proposed decision to deny.* EPA proposes to deny McCrone's petition for exemption. Although McCrone has met the statutory requirement of no unreasonable risk (section 6(e)(3)(B)(i) of TSCA), McCrone has failed to meet the statutory requirement of good faith efforts (section 6(e)(3)(B)(ii) of TSCA).

i. *Unreasonable risk finding.* EPA reaffirms its conclusion made in the July 10, 1984, PCB Exemption Rule, that McCrone has met the statutory requirement of no unreasonable risk (section 6(e)(3)(B)(i) of TSCA). EPA agrees that there are no unreasonable risks to health or the environment since McCrone continues to process and utilize PCBs in small quantities.

ii. *Good faith efforts finding.* The petitioner has not submitted any information that shows good faith efforts to substitute non-PCBs for PCBs as required by section 6(e)(3)(B)(ii) of TSCA. A good faith efforts finding requires a petitioner to show specifically what it did to substitute non-PCBs for PCBs or to show why it did not seek to substitute non-PCBs for PCBs. McCrone has shown no efforts to phase out the sale and use of PCBs where possible, nor has McCrone indicated an attempt, or why it made no attempt, to develop a chemical substance which may be substituted for PCBs as required by section 6(e)(3)(B)(ii) of TSCA.

Therefore, EPA proposes to deny McCrone's petition for exemption to process and distribute PCBs for microscopy because the petitioner did not provide the information necessary for EPA to conclude that good faith efforts were made to substitute non-PCBs for PCBs as required by section 6(e)(3)(B)(ii) of TSCA.

2. *R.P. Cargille Laboratories, Inc.* On June 28, 1985, the R.P. Cargille Laboratories, Inc. (Cargille) requested a renewal of its 1-year exemption to process and distribute in commerce PCBs for the following: (1) Use as a mounting medium in microscopy; (2) use as an immersion oil in low fluorescence microscopy (other than capillary microscopy); and (3) use as an optical liquid (PDE 181). EPA granted Cargille a 1-year exemption in July 1984 to engage in substantially similar activities. EPA proposes to deny this petitioner's request for another 1-year exemption because the petitioner has failed to meet the statutory requirement of good faith efforts as required by section 6(e)(3)(B)(ii) of TSCA.

a. *Background.* In the July 10, 1984, PCB Exemptions Rule (49 FR 28154), EPA granted Cargille's 1979 petition for 1 year to: (1) Process and distribute in commerce PCBs for use as a mounting medium in microscopy for all purposes; (2) process and distribute in commerce small quantities of PCBs for use as an optical liquid; and (3) process and distribute in commerce PCBs for use as an immersion oil in low fluorescence microscopy (other than capillary microscopy). EPA concluded that

granting an exemption would not result in an unreasonable risk of injury to health or the environment and that Cargille had made good faith efforts to develop substitutes for PCBs and to phase out the sale and use of PCBs whenever possible. The exemption was granted on the condition that Cargille store the PCBs it processes and distributes in commerce in accordance with the storage for disposal requirements of 40 CFR 761.65(b).

i. *Unreasonable risk finding.* In Cargille's previous exemption petition, EPA concluded, after considering the effects on human health and the environment, the potential for exposure to PCBs, the benefits of using PCBs and the availability of substitutes, and the economic impact of various regulatory options, as discussed in the July 10, 1984, Use Authorization Rule, that granting Cargille an exemption would not result in an unreasonable risk of injury to health or the environment. EPA also concluded that since Cargille would process and utilize PCBs in small quantities it would present no unreasonable risk to human health or the environment. Thus, EPA concluded that granting Cargille's petition for exemption to process and distribute in commerce PCBs for the uses described above would not present an unreasonable risk of injury to health or the environment.

ii. *Good faith efforts finding.* In EPA's evaluation of good faith efforts, EPA concludes that Cargille made good faith efforts to develop substitutes for PCBs and to phase out the sale and use of PCBs whenever possible. EPA was persuaded, at that time, that in some circumstances there are no adequate substitutes for PCBs for use as a mounting medium in microscopy in some relatively rare instances, such as preserving crime scene evidence; in low fluorescence medical research (other than capillary microscopy); and in space communications and defense-related projects that require specialized optical liquids. In addition, Cargille voluntarily entered into a consent agreement with EPA to store the PCBs it processes and distributes in commerce in accordance with the storage for disposal requirements of 40 CFR 761.65(b). Thus, EPA granted Cargille's petition for 1 year to process and distribute in commerce PCBs for use (except as a precision calibration standard), with the condition that Cargille store the PCBs it processes and distributes in accordance with the storage for disposal requirements of 40 CFR 761.65(b).

b. *Rationale for proposed decision to deny.* EPA proposes to deny Cargille's

new petition for exemption. Although Cargille has met the statutory requirement of no unreasonable risk (section 6(e)(3)(B)(i) of TSCA), Cargille has failed to meet the statutory requirement of good faith efforts (section 6(e)(3)(B)(ii) of TSCA).

i. *Unreasonable risk findings.* EPA concludes that granting Cargille an exemption would not result in an unreasonable risk of injury to health or the environment. EPA reaffirms its conclusion, made in the July 10, 1984, PCB Exemptions Rule, that Cargille has met the statutory requirement of no unreasonable risk (section 6(e)(3)(B)(i) of TSCA). EPA sees no significant changes since Cargille's earlier petition to necessitate a change in EPA's previous conclusion of no unreasonable risk made in the PCB Exemptions Rule.

Cargille continues to process PCBs in small quantities, using laboratory practices designed to minimize human and environmental exposure to PCBs, including the use of exhaust fume hoods and personal protection equipment. Once Cargille has distributed the PCBs, the risks of exposure to humans and the environment are minimized by the small quantities of PCBs used in each application, by the viscosity of the PCBs, and by the careful handling procedures typical of laboratory work.

ii. *Good faith efforts finding.* EPA considers several factors in determining whether a petitioner has made good faith efforts (see Unit III.). One such factor is whether a petitioner has expended time and effort to develop or search for a substitute. Although Cargille alleges that good faith efforts are underway to develop PCB-free replacements for low fluorescence immersion oil and PCB-containing mounting media, no evidence has been submitted to substantiate this allegation. Cargille's last exemption petition was granted based on Cargille's assertions that good faith efforts were underway to develop PCB-free replacements. In fact, Cargille stated in their last petition for exemption (in 1984) that they anticipated that such replacements would be available in 1 year to 18 months. 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. Therefore, without further evidence of Cargille's continuing efforts to develop substitutes for PCB-containing immersion oil and mounting media, EPA cannot make a finding of good faith efforts.

Therefore, EPA proposes to deny Cargille's petition for exemption to: (1) Process and distribute in commerce

PCBs for use as a mounting medium in microscopy for all purposes; (2) process and distribute in commerce PCBs for use as an immersion oil in low fluorescence microscopy (other than capillary microscopy); and (3) process and distribute in commerce small quantities of PCBs for use as an optical liquid.

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 another petitioner a petition for exemption to import small quantities of PCBs for 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. "Small quantities for research and development" is defined at 40 CFR 761.3 as "any quantity of PCBs (1) that is originally packaged in one or more hermetically sealed containers of a volume of no more than five (5.0) milliliters, and (2) that is used only for purposes of scientific experimentation or analysis, or chemical research on, or analysis of, PCBs, but not for research or analysis for the development of a PCB product."

The processing and distribution of PCBs in small quantities for use in research and development is also allowed via a class exemption which eliminated the need for each processor and distributor to file an individual exemption. In the PCB Exemptions Rule, published in the *Federal Register* of August 8, 1986 (51 FR 28556) EPA granted a class exemption to all persons processing and distributing in commerce PCBs for use in research and development. The class exemption includes all persons or business entities which process and distribute in commerce PCBs in accordance with the definition of "small quantities for research and development" as specified in 40 CFR 761.3. EPA placed the following terms and conditions on the class exemption: (a) That all processors and distributors maintain records of their PCB activities for a period of 5 years; and (b) that any person or company that expects to process or distribute in commerce 100 g (0.22 lbs.) or more PCBs for research and development in 1 year report to EPA and identify the sites of PCB activities and

the quantities of PCBs to be processed or distributed in commerce.

In granting this class exemption, EPA retained the authority to terminate the class exemption, or to exclude any processor or distributor from the class exemption, upon determining that maintaining the class exemption as to all, or some, processors and distributors will pose an unreasonable risk of injury to health or the environment. Any changes in the disposition of the class exemption, or the status of individuals within the class exemption, will be published in a notice of proposed rulemaking and the petitioners will be allowed to continue activities until a final rule is promulgated.

The manufacturing and/or exporting of PCBs in small quantities for research and development is not allowed without specific individual exemptions (manufacture includes importation under 40 CFR 761.3.). Therefore, while the petitioner's processing and distribution in commerce activities are covered by the class exemption discussed above, EPA must make a company-specific determination of no unreasonable risk and good faith efforts before granting petitions for exemption to manufacture and/or export PCBs for use in research and development.

1. Accu-Standard

On April 11, 1986, Accu-Standard submitted two petitions for exemptions to (i) manufacture PCBs in small quantities for research and development, and (ii) export PCBs in small quantities for research and development. EPA proposes to grant both Accu-Standard petitions for exemption because Accu-Standard's manufacturing and export activities are consistent with research and development activities which were found not to pose an unreasonable risk in the July 10, 1984, and August 8, 1986, final PCB Exemption Rules (49 FR 28154 and 51 FR 28556, respectively).

Both final PCB Exemption Rules also concluded that while the general goal of TSCA section 6(e) is to phase out the manufacture, processing, distribution in commerce, and use of PCBs, this goal does not apply to critical health, environmental, and scientific research on PCBs. EPA believes that some PCBs will always be needed, if only for analytical standards, to ensure that the goal of section 6(e) is being met. Therefore, EPA has maintained the policy of automatically renewing exemptions for manufacture, processing, distribution in commerce, and export of PCBs for research and development at the end of each year unless the petitioner changes the quantity of PCBs

or the manner of handling of PCBs (in the case of exemptions to manufacture or export PCBs for research and development), or the Agency receives information affecting the unreasonable risk determination as to any or all members of the class exemption to process and distribute in commerce PCBs in small quantities for research and development.

Thus, should either or both of the Accu-Standard exemption requests be granted in the final action on this proposed rule, EPA will automatically renew the exemption(s) every year. However, Accu-Standard will be required to notify EPA of any substantial changes in the quantity handled, or the manner of handling PCBs under the Accu-Standard exemption(s). EPA will review such information, and change the status of the exemption(s), if necessary, by rulemaking. The petitioner will be allowed to continue its activity under the exemption(s) until the Agency takes final action changing the status of the exemption(s).

a. Unreasonable risk: manufacture. In the July 10, 1984, final PCB Exemptions Rule, EPA concluded that the manufacture of PCBs for research and development does not pose unreasonable risks of injury to human health or the environment. EPA based this finding on the following considerations: (1) these PCBs are manufactured using good laboratory practices which are designed to minimize human and environmental exposure; (2) the PCB synthesis is performed by trained laboratory personnel; and (3) the risk of exposure, if any, to PCBs during the subsequent storage and shipment of analytical standards is small because the PCBs are packaged in hermetically sealed containers and are marked with warning labels.

Accu-Standard will be manufacturing as little as 200 mg, and no more than 100 g, of PCBs per year. Accu-Standard employs trained laboratory personnel who operate in accordance with good laboratory practices. PCBs manufactured by Accu-Standard will be packaged in hermetically sealed containers of 5 ml or less (by volume). Therefore, 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.

b. Unreasonable risk: Export. The Agency 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.

Accu-Standard will be distributing in commerce (within the United States and for export approximately 800 g of PCBs. Accu-Standard is uncertain how much of this total will be exported under the exemption, if granted. Assuming that Accu-Standard could potentially export as much as 800 g of PCBs under an export exemption, EPA finds that no unreasonable risk will result from granting the exemption.

c. Good faith efforts finding. EPA has determined that the good faith efforts finding is not relevant to petitions to manufacture or export PCBs in small quantities for research and development because there are no substitutes for PCBs in health and environmental research. Pure PCBs are needed for this research because commercial PCBs contain mixture 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 research and development.

Therefore, EPA proposes to grant Accu-Standard two exemptions: (1) To manufacture PCBs in small quantities for research and development; and (2) to export PCBs in small quantities for research and development.

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 PCB-containing fluid taken from PCB Transformers which have been retrofilled, for purposes of testing and analysis. Unison wants to analyze this fluid to determine PCB concentration, as well as other parameters such as moisture content, as part of its customer service program. Unison wishes to ship no more than 250 samples. Unison states that each sample will contain 5 mL or less fluid and will be shipped in EPA and DOT-approved shipping containers with sufficient absorbent to prevent any releases from containers. Unison also states that the PCB concentration in such samples can range from 0-100 percent. EPA proposes to grant Unison's petition, because Unison's import activity is consistent with research and development activities which were

found not to pose an unreasonable risk in the July 10, 1984, and August 8, 1986, final PCB Exemption Rules. EPA proposes to grant this petitioner's request for a 1-year exemption to import small quantities of PCBs for research and development provided the petitioner meets the conditions of the exemption as stated in § 761.80(m)(8).

The July 10, 1984, and the August 8, 1986, rules concluded that while the general goal of TSCA section 6(e) is to phase out the manufacture (which includes importation under § 761.3), processing, distribution in commerce, and use of PCBs, this goal would not be served if critical health, environmental and scientific research on PCBs is prevented. EPA believes that some PCBs will always be needed, if only for analytical standards to ensure that the goal of section 6(e) is being met. EPA automatically renews exemptions for manufacture, processing and distribution in commerce, and export of PCBs for research and development. However, EPA will require that should an increase in the amount of PCBs to be manufactured, imported, or exported or any change in the manner of manufacture, import, or export of PCBs, petitioners are to notify EPA, as specified at 51 FR 28556 (August 8, 1986).

Thus, should Unison's exemption request be granted in the final action on this proposed rule, EPA will automatically renew the exemption every year. However, Unison will be required to notify EPA of any substantial changes in the quantity handled, or the manner of handling PCBs under Unison's exemption. EPA will review such information, and change the status of the exemption, if necessary, by rulemaking. The petitioner will be allowed to continue its activity under the exemption until the Agency takes final action changing the status of the exemption.

a. *Unreasonable risk finding.* EPA concluded that granting an exemption will not present an unreasonable risk of injury to health or the environment. Should Unison follow the conditions of the exemption, that is: (i) The use of 5.0 ml hermetically sealed vials, (ii) the total to be imported not to exceed 250 samples during the exemption period, and (iii) quarterly inspections of its laboratories to ensure that proper safety procedures are being followed, there will be no unreasonable risk of injury to health or the environment. Furthermore, Unison stated that the shipping container will be shipped with sufficient absorbent to prevent PCB release into the environment should an accident occur.

To ensure proper handling of samples, Unison stated that this laboratory employees who will be involved in the collection, shipping, and analysis of samples have been specially trained in handling, analysis, and disposal of fluids containing PCBs. Unison stated that it requires its workers to wear protective clothing, handle PCBs in a hood used exclusively for PCB-related work, all of which will minimize exposure to PCBs. Unison did not estimate what the cost of denial would be, but did state that denial of the application would significantly hinder efforts in many countries to offer their services, which would adversely impact efforts to remove PCBs from U.S. corporate-owned transformers abroad. Unison stated that granting the petition would expedite removal and destruction of PCBs in many nations. Unison also stated that it has explored the alternative of having these analyses conducted in the countries in which the samples are taken, but found they do not have the precision and reliability required to track and assure successful application of the technology as demonstrated in the United States. In particular, foreign laboratories do not have the necessary experience to quantitate PCBs in Unison's proprietary fluid.

The considerations involved with this petition of Unison are similar to those of the petitions for the manufacturing, processing, and distribution in commerce of PCBs for research and development, as described in Unit IV.D. of this preamble. The goal of section 6(e) of TSCA is to phase out the manufacture, processing, distribution in commerce and use of PCBs. EPA believes that this goal does not apply to petitioners, such as Unison, who import small quantities of PCBs for the continuation of important research activities. The importation of small quantities of PCB fluid for research and development under the safeguards provided in the Unison petition in addition to the conditions EPA has placed on the exemption, will aid in the Agency's implementation of section 6(e) of TSCA.

Should a 1-year exemption be granted to Unison, EPA will automatically renew the exemption unless Unison notifies EPA of any increase in the amount of PCBs to be imported or any change in the manner of import of PCBs. Any changes in these factors may affect EPA's conclusion that the exemption does not present an unreasonable risk of injury to health or the environment. EPA will consider the submission of such information to be a renewed petition for

exemption. EPA will evaluate the information in the renewed exemption petition, published a proposed rule for public comment, and issue a final rule either granting or denying the exemption. Until EPA acts on the renewed exemption petition, the petitioner will be allowed to continue the activities for which it requests exemption.

b. *Good faith efforts finding.* EPA concluded that Unison made good faith efforts to substitute non-PCBs for PCBs. Indeed, Unison's petition for exemption to test the samples is an important part of its program to get customers to substitute Unison's non-PCB transformer fluid for PCB transformer fluid. Granting an exemption will benefit society by promoting the use of a non-PCB transformer fluid as a substitute for PCBs, thereby reducing contamination both within the United States and abroad. In addition, Unison's success in marketing the non-PCB transformer fluid abroad may indirectly help it market such substitutes in the United States, as these substitutes become more widely accepted and used. Thus, granting Unison an exemption furthers EPA's goal of phasing out PCB's.

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.

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".

The Uncontrolled PCB Rule published in the Federal Register of July 10, 1984 (49 FR 28172), excluded from the prohibition on the manufacture, processing, distribution in commerce, and use of PCBs those PCBs, inadvertently generated in an "excluded manufacturing process". An "excluded manufacturing process" as defined at 40 CFR 761.3 is a manufacturing process or importation in which the concentration of inadvertently generated PCBs in the product is limited to an annual average of less than 25 ppm, with a 50 ppm maximum, except that the concentration of inadvertently generated PCBs in the components of detergent bars must be less than 5 ppm. Limits are also placed on the concentration of PCBs discharged to air and water from an excluded manufacturing site.

The Uncontrolled PCB Rule placed limits on the concentration of PCBs leaving the site of processes which generate PCBs as inadvertent

byproducts. EPA also placed limits on the concentration of inadvertently generated PCBs in products imported into the United States. The processing, distribution in commerce, and use of products of "excluded manufacturing processes" are excluded from the prohibitions on the processing, distribution in commerce, and use of PCBs. Thus, the intent of the Uncontrolled PCB Rule is to limit the addition of PCBs into the environment by regulating the concentration of inadvertently generated PCBs in products at the point where the PCBs are introduced into commerce.

Processors and distributors of products containing inadvertently generated PCBs are responsible for determining that their suppliers' processes qualify as "excluded manufacturing processes", or that their suppliers have exemptions to manufacture or import, and distribute, PCBs over regulatory limits. However, since EPA regulates concentrations of inadvertently generated PCBs in products at the point of the original manufacture or import of the PCBs, a manufacturer or importer cannot assign its duty to comply with the limits on "excluded manufacturing processes" to downstream processors, distributors, or users. Therefore, processors and distributors of inadvertently generated PCBs should not need exemptions except where an exemption is needed to process or distribute inadvertently generated PCBs in inventories accumulated prior to the effective date of the Uncontrolled PCB Rule (October 1, 1984). Although EPA's final amendment to the Uncontrolled PCB Rule (June 27, 1988; 53 FR 24206) specifically excludes from regulation activities involving materials generated prior to October 1, 1984 with PCB concentrations up to 50 ppm, petitioners who generated PCBs at concentrations above 50 ppm continue to need an exemption to distribute in commerce these inadvertently generated PCBs.

In considering petitions for exemption to manufacture, import, or distribute in commerce inventories of inadvertently generated PCBs above the limits established in the Uncontrolled PCB Rule, EPA will evaluate the exposures and risks associated with the further processing, distribution, and use of the PCBs. EPA considered such exposure issues when it established average and maximum concentration levels for inadvertently generated PCBs at the point of their introduction into commerce, and included the further processing, distribution, and use of those PCBs in the Uncontrolled PCB Rule.

1. 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 (AlCl₃) containing inadvertently generated PCBs above the limits established in the Uncontrolled PCB Rule. In the Federal Register published on August 8, 1986 (51 FR 28556), EPA granted ALCOA and its customers a 1-year exemption to process and distribute in commerce inadvertently generated PCBs at concentrations above those specified for "excluded manufacturing processes at § 761.3, provided that the conditions for the exemption were met. The conditions included: (a) Limiting the exemption to the sale of 1,116,225 lbs. of AlCl₃ for use in the production of pigments; or (b) requiring ALCOA to notify the Agency 30 days prior to delivery if the AlCl₃ is to be sold for use only in the production of pigments to a company other than Kemira, Incorporated of Savannah, GA.

EPA proposes to grant this petitioner's request for another 1-year exemption provided the conditions for exemption are met and maintained.

a. *Background.* In the August 8, 1986, PCB Exemptions Rule, EPA granted, with certain conditions, ALCOA's petition to process and distribute in commerce inadvertently generated PCBs at concentrations above those specified for "excluded manufacturing processes" at § 761.3. EPA determined that granting ALCOA an exemption would not pose an unreasonable risk of injury to human health or the environment and that ALCOA had demonstrated good faith efforts and thus, granted ALCOA a 1-year exemption. However, since ALCOA had approximately twice the amount of AlCl₃ in inventory as it expected to distribute in commerce during that 1-year exemption period, EPA anticipated that ALCOA would request another renewal of the exemption to allow further distribution in commerce at the end of that 1-year approval period. ALCOA's Anderson County Works, which is no longer in operation, used a process in which AlCl₃ was converted to aluminum metal. ALCOA provided information indicating that there would be no PCBs in the aluminum metal and that all PCBs are concentrated in process wastes which would be disposed of in accordance with EPA regulations. Thus, the 90 percent of the AlCl₃ which would be converted to metallic aluminum is part of an "excluded manufacturing process" since the metallic aluminum contains no PCBs and EPA considers a manufacturing process to be all of a

series of unit operations at one site (a contiguous property) resulting in the production of a product. Thus, ALCOA does not need an exemption to manufacture AlCl₃ for use in the production of aluminum metal at Anderson County Works.

Of the AlCl₃ produced by the Anderson County Works process, 10 percent is not converted to aluminum metal. ALCOA petitioned for exemptions to manufacture and distribute in commerce that 10 percent of AlCl₃ as a product, as well as to distribute in commerce a substantial amount of AlCl₃ in ALCOA's inventory. Although the Anderson County Works was not in operation, ALCOA's petition requested that it be allowed to manufacture and distribute in commerce 10 percent of its AlCl₃ production capacity as a product should the plant be reopened within the exemption period. ALCOA specified that if an exemption were granted, the existing inventory of AlCl₃ would be distributed in the commerce, whether or not the plant is reopened.

During the comment period on the proposed rule and the public meeting on November 6, 1985, ALCOA withdrew its petition for exemption to manufacture AlCl₃, stating that ALCOA had no plans to resume production of AlCl₃ for its anhydrous aluminum process. ALCOA also amended its petition for exemption to distribute in commerce AlCl₃ containing PCBs at concentrations above the limits established in the Uncontrolled PCB Rule. The amended petition requested exemption only to distribute in commerce its existing inventory.

i. *Unreasonable risk finding.* In the August 8, 1986, final PCB Exemptions Rule, EPA concluded that granting the ALCOA exemption petition would not pose an unreasonable risk of injury to human health or the environment. ALCOA submitted detailed information on the Kemira process which showed that the concentration of PCBs in the Kemira pigment will be about 5 ppm. The Agency determined that pigments compose as little as 2 percent and no more than 20 percent of final consumer products and that no unreasonable risks would result from the processing, distribution in commerce, and use of inadvertently generated PCBs in pigments, assuming that pigment is contaminated with PCBs at the maximum level of 50 ppm. The exposure and associated risks involved in the distribution in commerce of the AlCl₃ for use in the manufacture of pigments, as well as the further processing, distribution in commerce, and use of the AlCl₃ are estimated to be on the same

order of magnitude as the concentration levels allowed for "excluded manufacturing processes" in the Uncontrolled PCB Rule.

Based on specific information submitted by ALCOA during the comment period, EPA estimated that the economic consequences of denying the petition involved the costs of disposing of 500,000 lbs. of AlCl₃ (the amount to be sold during the 1-year exemption period) in accordance with the regulations on the disposal of PCBs at 40 CFR 761.60 and the lost sale value of the pigment. EPA concludes that the total economic consequences to ALCOA if its exemption petition were denied would have been about \$995,000.

After careful consideration of the risks posed by the use of the AlCl₃ in the production of pigment, and by the use of the pigment in downstream processes and products, EPA has determined that the economic consequences of a denial to ALCOA are not warranted when compared with the relatively low risks associated with granting the exemption.

ii. *Good faith efforts finding.* Since ALCOA had limited its exemption petition to existing inventory and since they would not be producing any additional AlCl₃, EPA determined that the good faith efforts concern was no longer pertinent. The current inventory was produced by ALCOA under the EPA policy that allowed activities to continue while EPA acted on their petition (See Unit I.B.). Thus, the Agency found that the petitioner had demonstrated good faith efforts.

b. *Rationale for proposed decision to grant.* EPA proposes to grant ALCOA's present exemption petition to process and distribute in commerce inadvertently generated PCBs at concentrations above those specified for "excluded manufacturing processes" at § 761.3 provided that the conditions set forth for such exemption are met. The conditions are that: (i) The exemption is limited to the 440,855 lbs. of AlCl₃ for use in the production of pigments and (ii) the Agency must be notified 30 days prior to delivery if the AlCl₃ is to be sold to a company other than Kemira, Inc. of Savannah, GA.

According to ALCOA's present petition for exemption, ALCOA has permanently closed the Anderson County facility which is presently undergoing decommissioning. Further, ALCOA continues to sell only from the inventory at the Anderson County facility to only one customer (Kemira, Inc.), at one plant location (Savannah, GA). Petitioner has continued to comply with all the conditions EPA set forth when the last exemption was granted.

EPA presumes ALCOA's continued good faith efforts to comply with all of the PCB regulations at 40 CFR Part 761, and to operate within the limits of its exemptions should it be granted in the final rule.

i. *Unreasonable risk finding.* ALCOA is engaged in the same activity for which it received its last 1-year exemption. Therefore, EPA concludes that granting ALCOA an exemption would not result in an unreasonable risk of injury to health or the environment since ALCOA is not manufacturing PCBs, but is distributing in commerce inadvertently generated PCBs that are estimated to be on the same order of magnitude as the concentration levels allowed for "excluded manufacturing processes" in the Uncontrolled PCB Rule.

ii. *Good faith efforts finding.* The Agency concluded, for the last exemption, that the good faith efforts concern was not pertinent since ALCOA limited its exemption petition to its existing inventory and was not producing additional AlCl₃. ALCOA continues to limit the request for exemption to its existing inventory and continues to engage in the same activity. Thus, EPA proposes to grant ALCOA an exemption to distribute in commerce its existing inventory of AlCl₃, provided that the conditions set forth in 40 CFR 761.80(q)(1) (i) and (ii) are met. In granting the ALCOA petition to distribute in commerce its existing inventory of aluminum chloride, EPA is also exempting from the prohibitions on the processing, distribution in commerce, and use of PCBs the further processing and distribution in commerce of these PCBs. Accordingly, processors and distributors of ALCOA's inventory of AlCl₃ do not have to apply for separate exemptions.

EPA concludes that ALCOA has submitted sufficient information to determine that ALCOA has acted in good faith compliance with the terms of their last exemption. Therefore, EPA proposes to grant ALCOA's petition for a 1-year exemption to process and distribute in commerce inadvertently generated PCBs at concentrations above those specified for "excluded manufacturing processes."

V. 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 proposed rule

is a continuation of that docket under OPTS-66008F.

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is issuing the following list of documents, which constitutes the record of this proposed rulemaking. A supplementary list or lists may be published any time on or before the date the final rule is issued. However, public comments, the transcript of the rulemaking hearing (if one is held), 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 TSCA Assistance Office listed under "FOR FURTHER INFORMATION CONTACT."

A. Previous Rulemaking Records

(1) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Disposal and Marking Rule," Docket No. OPTS-68005, 43 FR 7150, February 17, 1978.

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

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

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

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

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

(7) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Response to Individual and Class

Petitions for Exemption," Docket No. OPTS-66008A, 49 FR 28154, July 10, 1984.

(8) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Exclusions, Exemptions and Use Authorizations," Docket No. OPTS-62032A, 49 FR 28172, July 10, 1984.

(9) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Microscopy and Research and Development," Docket No. OPTS-62031A, 49 FR 28193, July 10, 1984.

(10) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Response to Exemption Petitions; Proposed Rule," Docket No. OPTS-66008C, 50 FR 35182, August 29, 1985.

B. Federal Register Notices

(11) 43 FR 50905, November 1, 1978, USEPA, "Procedures for Rulemaking Under Section 6 of Toxic Substances Control Act; Interim Procedural Rules for Polychlorinated Biphenyls (PCBs) Ban Exemption."

(12) 44 FR 108, January 2, 1979, USEPA, "Polychlorinated Biphenyls (PCBs): Policy for Implementation and Enforcement."

(13) 44 FR 31558, May 31, 1979, USEPA, "Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act: Interim Procedural Rules for Exemptions from the Polychlorinated Biphenyl (PCB) Processing and Distribution in Commerce Prohibitions."

(14) 44 FR 31564, May 31, 1979, USEPA, "Polychlorinated Biphenyls (PCBs): Proposed Rulemaking for PCB Manufacturing Exemptions."

(15) 44 FR 42727, July 20, 1979, USEPA, "Proposed Rulemaking for Polychlorinated Biphenyls (PCBs): Manufacturing Exemptions; Notice of Receipt of Additional Manufacturing Petitions and Extension of Reply Comment Period."

(16) 45 FR 15247, March 5, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Statement of Policy on All Future Exemptions Petitions."

(17) 45 FR 29115, May 1, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Expiration of the Open Border Policy for PCB Disposal."

(18) 48 FR 50486, November 1, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce Exemptions; Proposed Rule," Docket No. OPTS 60008.

(19) 48 FR 52402, November 17, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing,

Distribution in Commerce, and Use Prohibitions; Use in Microscopy and Research and Development; Proposed Rule," Docket No. OPTS-62031.

(20) 48 FR 55076, December 8, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Exclusions, Exemptions and Use Authorizations; Proposed Rule," Docket No. OPTS-62032.

(21) 49 FR 28203, July 10, 1984, USEPA, "Polychlorinated Biphenyls (PCBs); Request for Additional Comments on Certain Individual and Class Petitions for Exemptions," Docket No. OPTS-66008B.

(22) 48 FR 39966, October 11, 1984, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Transformers; Proposed Rule," Docket No. 62035A.

(23) 51 FR 28556, August 8, 1986, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing and Distribution in Commerce and Use Prohibitions; Response to Exemption Petitions; Final Rule," Docket No. 66008E.

(24) 50 FR 35201, August 29, 1986, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Response to Ward Transformer Company Petition; Notice of Final Action," Docket No. 66008D.

(25) 50 FR 35182, August 29, 1986, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing and Distribution in Commerce and Use Prohibition; Response to Exemption Petitions; Proposed Rule," Docket No. 66008C.

(26) 53 FR 24206, June 27, 1988, USEPA, "Polychlorinated Biphenyls (PCBs); Exemptions and Use Authorizations; Final Rule," Docket No. OPTS-62053A.

C. Support Documents

(27) USEPA, OPTS, ETD, "PCB Exemption Petitions Economic Impact Analysis" (July 1983).

(28) USEPA, OPTS, ETD, "PCB Exemption Petitions Economic Impact Analysis" (April 1984).

(29) USEPA, OPTS, ETD, "PCB Exemption Petitions Economic Impact Analysis" (May 1985).

(30) USEPA, OPTS, ETD, "Addendum to PCB Exemptions Petitions Economic Analysis" (January 1986).

(31) USEPA, OPTS, ETD, "Addendum to PCB Exemptions Petitions Economic Impact Analysis" (June 1986).

EPA will identify the complete rulemaking record on or before the date of promulgation of the final rule, as prescribed in section 19(a)(3) of TSCA. EPA will consider for inclusion in the record additional materials submitted at

any time between the publication of this proposed rule and the date the Agency identifies the final record.

VI. Other Regulatory Requirements

A. Executive Order 12291

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

EPA has concluded that this proposed rule 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 United States enterprises to compete with foreign enterprises in domestic or foreign markets. The proposed rule allows the manufacture, processing, 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 Exemption. This proposed 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 *et seq.*, 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 proposed 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 proposed rule on the small businesses whose petitions EPA proposes to deny. 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 proposing to deny the exemption petition that was submitted 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 proposes to deny one petition that was submitted 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 an average size PCB-contaminated transformer, assuming all of the transformer fluid has to be disposed of and replaced.

EPA proposes to deny the two exemption petitions to process and distribute in commerce PCBs for use as a mounting medium in microscopy. The costs of denial would be less than \$2,000.

EPA proposes to deny 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. The cost of denial would be less than \$4,500. Cargille's petition stated that the "economic consequences of denying the petition are quite small."

As handled in the past, EPA intends to grant any of the above petitions if comments show that the petitioner has made good faith efforts in accordance with section 6(e)(3)(B)(ii) of TSCA.

Therefore, in accordance with section 605(b) of the Act, EPA certifies that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities. EPA solicits comments from petitioners and other interested persons concerning the economic impact of this proposed rule on small business entities. In addition, EPA is sending a copy of this proposed 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. Section 6(e)(3)(A) of TSCA and EPA's PCB Ban Rule, 40 CFR

Part 761, prohibit the manufacture, processing, and distribution in commerce of PCBs. Section 6(e)(3)(A) of TSCA permits EPA to grant exemptions from these prohibitions if it finds 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.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this proposed rule under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070-0021.

Public reporting burden for this collection of information is estimated to average 7 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: August 16, 1988.

Charles L. Elkins,
Director, Office of Toxic Substances.

Therefore it is proposed that 40 CFR Part 761 be 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, and 2611; Subpart G also issued under 15 U.S.C. 2614 and 2616.

2. In § 761.80 by adding paragraphs (e), (f)(8), (m)(7) and (8), (q), (r), (s), and the OMB control number to read as follows:

§ 761.80 Manufacturing, processing and distribution in commerce exemptions.

(e) The Administrator grants the following petitioners an exemption for 1 year to process and distribute in commerce PCB-contaminated fluid in buying and selling used PCB-contaminated transformers.

(1) Ward Transformer Co., St. Louis, MO 63132 (PDE-77), provided the following conditions are met:

(i) Full compliance with all terms and conditions of the CERCLA Consent Decree identified as *U.S. v. Ward, et al.* No. 83-63-CIV-5 (E.D.N.C. June 13, 1986).

(ii) Must not transfer nor allow contractors or subcontractors to utilize the exemption.

(iii) Develop and maintain records during the exemption period on the disposition of all PCBs and PCB Items. These records shall form the basis of a quarterly report to be submitted to EPA, Office of Compliance Monitoring, for the duration of the exemption. The following information shall be included in the quarterly report:

(A) The name (owner or customer), address, location, and serial number of any electrical equipment to be serviced subject to this exemption.

(B) All test data, by method and laboratory, or name plate data, demonstrating the amount and concentrations of PCB fluid being removed from service.

(C) The method, equipment, and personnel used to remove PCB liquids from transformers (to verify actual practices, spillage, etc.).

(D) Identification of all temporary or permanent containers, by serial number, Mark M_L, or other mechanism, to identify the source of the PCB fluids removed for disposal.

(E) The method and location of disposal or destruction.

(F) For PCBs and PCB items removed from service, the location of the initial disposal or storage facility and the name of the owner or operator of the facility.

(G) The dates when PCBs and PCB items are removed from service, are placed into storage for reuse or disposal, and are placed into transport for disposal.

(H) Total quantities of PCBs and PCB items remaining in service at the end of

each quarter shall be indicated using the following breakdown:

(1) Total weight in kilograms of any PCBs and PCB Items in PCB Containers including the identification of container contents.

(2) Total number of PCB Transformers and total weight in kilograms of any PCBs contained in the transformers.

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

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

(K) Any applications and related correspondence sent by the owner or operator of the facility to any local, State, and Federal authorities in regard to waste water discharge permits, solid waste permits, building permits, or other permits or authorizations such as those required by §§ 761.70(d) and 761.75(c).

(iv) All documents shall be available at the facility for inspection by authorized representatives of EPA.

(2) Jerry's Electric, Inc., Colman, SD 57017 (PDE-133)

(f) * * *

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

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(m) * * *

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

(8) Unison Transformer Services, Inc., Tarrytown, NY 10591, provided 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.

(iii) Petitioner must make quarterly inspections of its laboratories to ensure that proper safety procedures are being followed.

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(q) The Administrator grants the following petitioners, and their customers, an exemption for 1 year to process and distribute in commerce inadvertently generated PCBs at concentration above those specified for "excluded manufacturing processes" at

§ 761.3 provided that the conditions for each exemption are met.

(1) Aluminum Company of America, Pittsburgh, PA 15219 (PDE-13).

(i) The exemption is limited to the sale of 440,855 lbs. of aluminum chloride for use in the production of pigments.

(ii) [Reserved]

(2) [Reserved]

(r) The Administrator grants the following petitioners a 1-year exemption to distribute in commerce heat transfer and hydraulic systems containing less than 50 ppm PCBs, provided that the systems are drained prior to distribution in commerce.

(1) General Motors Corporation, Warren, MI.

(2) [Reserved]

(s) The Administrator grants the following petitioners a 1-year exemption to export heat transfer and hydraulic systems containing less than 50 ppm PCBs, provided the systems are drained prior to export.

(1) General Motors Corporation, Warren, MI.

(2) [Reserved]

(Approved by the Office of Management and Budget under control number 2070-0021.)

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