National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 26, 2004.

Robert E. Roberts,

Regional Administrator, Region VIII.

■ 40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

■ 2. Section 52.320 is amended by adding paragraph (c)(103) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(103) On April 12, 2004, the Governor of Colorado submitted revisions to Regulation No. 11 ''Motor Vehicle Emissions Inspection Program'' that eliminated the Federal applicability of the Basic I/M program for El Paso County and the Colorado Springs CO attainment/maintenance area.

(i) Incorporation by reference.

(A) Regulation No. 11 ''Motor Vehicle Emissions Inspection Program'', 5 CCR 1001–13, as adopted on December 18, 2003, effective March 1, 2004, as follows: Part A.I., ''Applicability,'' final sentence of paragraph 2.

■ 3. Section 52.349 is amended by adding paragraph (j) to read as follows:

§ 52.349 Control strategy: Carbon monoxide.

* * * * *

(j) Revisions to the Colorado State Implementation Plan, carbon monoxide NAAQS, revised maintenance plan for Colorado Springs entitled ''Revised Carbon Monoxide Maintenance Plan for the Colorado Springs Attainment/Maintenance Area'', as adopted by the Colorado Air Quality Control Commission on December 18, 2003, State effective March 1, 2004, and submitted by the Governor on April 12, 2004.

[FR Doc. 04–20134 Filed 9–3–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPPT–2004–0043; FRL–7343–6]

RIN 2070–AC01

Storage of PCB Articles for Reuse; Availability of Supplemental Response to Comments Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of Supplemental Response to Comments Document.

SUMMARY: In 1998, EPA promulgated a major revision of the rules governing use, manufacture, processing, distribution in commerce, and disposal of polychlorinated biphenyls (PCBs). One of these amendments created a new authorization for storing PCB Articles for reuse, subject to certain requirements. These requirements were challenged in court. While the U.S. Court of Appeals for the Fifth Circuit's (the Court) decision generally upheld the requirements, the Court directed EPA to more fully address comments submitted during the rulemaking process that requested a waiver from the storage for reuse requirements for the electric utility industry. EPA has prepared a Supplemental Response to Comments Document that addresses those comments. That document explains why the comments do not contradict EPA's judgment that additional restrictions on storage for reuse were necessary to prevent an unreasonable risk, and do not support a generic waiver from the storage for reuse requirements for the electric utility industry. The Supplemental Response to Comments Document has been added to the rulemaking record and is available to the public.

ADDRESSES: EPA has established a docket for this action under OPPT–2004–0043. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OPPT Docket, EPA Docket Center, EPA West, Rm. B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Dave Hannemann, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0508; e-mail address: *hannemann.dave@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an electric utility that stores PCB Articles for reuse. Potentially affected entities may include, but are not limited to:

- Utilities (NAICS 22), e.g., Facilities that store PCB Articles for reuse; Electric Power Generation, Transmission and Distribution Facilities.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR part 761. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 761 is available on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

To access information about PCBs, go directly to the PCB Home Page at *http://epa.gov/pcb*.

II. Background

A. What Action is the Agency Taking?

In 1998, EPA promulgated a major revision of the rules governing use, manufacture, processing, distribution in commerce, and disposal of PCBs at 40 CFR part 761 (''PCB Disposal Amendments'') (Ref. 1). One of these amendments created a new authorization for storing PCB Articles (as defined at 40 CFR 761.3) for reuse (40 CFR 761.35), subject to certain requirements. These requirements were challenged in court. *Central and South West Services, et al,* v. *EPA*, 220 F.3d 683 (5th Cir. 2000) (Ref. 2). While the Court's decision generally upheld the requirements, the Court directed EPA to address comments submitted during the rulemaking process that requested a waiver from the storage for reuse requirements for the electric utility industry (Ref. 2). EPA has prepared a Supplemental Response to Comments Document that addresses those comments (Ref. 3).

1. *Rulemaking background*. Under the proposed rule, a PCB Article could have been stored for reuse outside of a regulated storage area for up to 3 years, so long as the equipment was maintained as if it were in use and the equipment was labeled. In addition, records would have to have been kept on the date the equipment was removed from use, what its future use would be, and when service or repair of the equipment was planned. EPA Regional Administrators could have waived the 3-year limit, if justified, at the owner or operator's request. EPA also requested comment on whether the rule should include provisions to allow site-specific or nationwide waivers or exemptions from the storage for reuse requirements (Ref. 4, p. 62822).

In proposing the storage for reuse requirements, EPA explained that it intended to prevent owners of PCB Articles from avoiding the disposal requirements for stored equipment by claiming that, despite the length of time the equipment had been in storage and its state of disrepair, they planned to reuse the equipment. EPA noted, ''This activity constitutes illegal disposal and creates additional risks of environmental exposure to PCBs while the equipment is 'in storage for reuse.''' At the same time, EPA was aware of the need to balance the proposed restrictions against the ''many legitimate instances which warrant the storage of PCB equipment for many years for the purpose of reuse as spares for critical components of electrical systems'' (Ref. 4, pp. 62821–62823).

EPA published the proposed amendments to the storage for reuse rules on December 6, 1994, as part of the proposed PCB Disposal Amendments. The Agency originally stated that it would accept written comments on the proposal for 120 days after its publication (Ref. 4, p. 62788), but extended the comment period by an additional 30 days based on a request from the public (Ref. 5). On June 6 and 7, 1995, EPA held a public hearing on the proposed rule in Washington, DC, where the Agency took oral comments. An additional period for written reply comments followed the hearing. Copies of all written comments and a transcript of the hearing are in the official public record for that rulemaking.

Comments on the proposed rule, and EPA's responses, are discussed in the preamble to the final rule (Ref. 1, pp. 35399–35400) and in the Response to Comment Document (Ref. 6, p. 39). Commenters on the storage for reuse provision asked EPA to extend the proposed 3-year limit on storage for reuse outside of a regulated storage area. Commenters stated in particular that industries like pipelines and electric utilities needed a longer storage period because of the need to have replacement equipment at hand to maintain service during emergencies. In the final rule, EPA extended the 3-year limit for storage outside of a regulated storage area to 5 years, or for a longer period if the owner or operator has received the approval of the EPA Regional Administrator (40 CFR 761.35).

Commenters also disagreed with the proposed requirement to label equipment in storage for reuse, pointing out that it duplicated existing recordkeeping requirements. Based on these comments, EPA did not include the labeling requirement in the final rule. However, the final rule does retain the requirement that the owner or operator of equipment in storage for reuse keep a record of the location where the equipment will be used when removed from storage. This requirement is needed to distinguish an article in storage for reuse from one in storage for disposal.

Finally, electric utilities and natural gas pipeline and transmission companies objected to the provision of the proposal that would have allowed indefinite storage for reuse only in a storage area that met the requirements of § 761.65(b). The commenters argued that they could not always store equipment for reuse in a § 761.65(b) storage area, since, for this equipment to be available as emergency replacements, it had to be stored near the site where it would be used. The final rule, therefore, allows PCB Articles to be stored indefinitely in a § 761.65(b) storage area, or in a storage area permitted under the Resource Conservation and Recovery Act (RCRA) section 3004 or 3006.

Commenters from the electric utility industry requested that EPA grant a national variance from the storage for reuse provisions for the electric utility industry. The industry commented that electric utilities store equipment that is electrically sound and that does not present a risk, and that stored equipment is vital to maintaining a reliable power system. Other commenters asserted that the recordkeeping requirements would be costly and difficult to implement. Several commenters also suggested that

individual electric utilities that have comprehensive PCB programs in place should be exempt from the storage for reuse requirements. The final rule did not include a provision allowing the industry site-specific or nationwide waivers or exemptions from the storage for reuse requirements, because the commenters did not supply any data showing that the equipment stored for reuse at the commenters' facilities is maintained in such a way that it remains intact and non-leaking and therefore does not present a risk to health or the environment.

2. *Litigation background*. Several entities representing the electric utility industry (Central and South West Services, Inc., Entergy Services, Inc., Mississippi Power Company, and Utility Solid Waste Activities Group, collectively referred to hereinafter as ''USWAG'') petitioned for review of § 761.35 in the U.S. Court of Appeals for the Fifth Circuit (Ref. 7). USWAG asked the Court to vacate § 761.35 on the grounds that this section was not supported by substantial evidence in the record as a whole, and that, after soliciting comment whether to allow nationwide waivers of the storage for reuse rules, EPA failed to respond to comments arguing for such a waiver for the electric utility industry (Ref. 8, pp. 28–51).

The Court rejected USWAG's first argument, holding that the proper standard of review for challenges to EPA rules restricting or prohibiting the use of PCBs is whether the rules are arbitrary and capricious, a more deferential test than inquiring whether the rules are supported by substantial evidence. The Court further found that EPA's decision to strengthen the storage for reuse rules to prevent practices that pose an unreasonable risk to health and the environment was not arbitrary and capricious. On USWAG's second argument, the Court agreed that EPA had not adequately responded to the electric utility industry's comments requesting a waiver. Rather than vacating § 761.35, the Court remanded the rule to EPA to provide a reasoned statement of why it did not grant a national variance for the electric utility industry. The Court noted, ''EPA may well be able to justify its decision to refuse to promulgate a national variance for the electric utilities and it would be disruptive to vacate a rule that applies to other members of the regulated community.''

3. *EPA's response to industry's comments*. EPA has prepared a Supplemental Response to Comments Document on storage of PCB Articles for reuse that addresses the electric utility industry's comments requesting a waiver from § 761.35. That document explains why based both on the information provided by commenters and other information available to the Agency, that a generic waiver from the storage for reuse requirements for the electric utility industry was not warranted. Based on the available information, EPA believes that additional restrictions on storage for reuse are necessary to prevent an unreasonable risk to human health and the environment.

B. What is the Agency's Authority for Taking this Action?

The Supplemental Response to Comments Document that EPA is adding to the rulemaking record provides a reasoned statement of why EPA did not grant a national variance from the storage for reuse requirements at 40 CFR 761.35 for the electric utility industry, as directed by the U.S. Court of Appeals for the Fifth Circuit in *Central and South West Services, et al,* v. *EPA*, 220 F.3d 683 (5th Cir. 2000) (Ref.2).

III. References and Other Materials Added to the Rulemaking Record

1. U. S. Environmental Protection Agency (USEPA), OPPT. Disposal of Polychlorinated Biphenyls (PCBs); final rule. **Federal Register** (63 FR 35384, June 29, 1998) (FRL–5726–1).

2. U.S. Court of Appeals for the Fifth Circuit. *Central and South West Services, et al,* v. *United States Environmental Protection Agency*. Case No. 98–60495, August 15, 2000.

3. USEPA, OPPT, National Program Chemicals Division (NPCD). Supplemental Response to Comment Document on the Proposed Rule—Disposal of Polychlorinated Biphenyls. January 2004.

4. USEPA, OPPT. Disposal of Polychlorinated Biphenyls; proposed rule. **Federal Register** (59 FR 62788, December 6, 1994) (FRL–4167–1).

5. USEPA, OPPT. Disposal of Polychlorinated Biphenyls (PCBs); extension of comment period and notice of informal hearing. **Federal Register** (60 FR 17510, April 6, 1995) (FRL–4948–1).

6. USEPA, OPPT, NPCD. Response to Comment Document on the Proposed Rule—Disposal of Polychlorinated Biphenyls. May 1998.

7. Central and South West Services, Inc., Entergy Services, Inc., Mississippi Power Company, and the Utility Solid Waste Activities Group (USWAG). Petition for Review (5th Cir., August 7, 1998).

8. USWAG. Brief of Petitioners Central and South West Services, Inc., Entergy Services, Inc., Mississippi Power Company, and the Utility Solid Waste Activities Group (USWAG) (Case No. 98–60495, 5th Cir., April 27, 1999).

9. USEPA, Region VI, Dallas, TX. Complaint and Notice of Opportunity for Hearing, TSCA Docket No. VI-533C. September 27, 1991.

10. USEPA, Region VI, Dallas, TX. Consent Agreement and Consent Order, TSCA Docket No. VI-533C. June 11, 1992.

11. USEPA, Region VI, Dallas, TX. Complaint and Notice of Opportunity for Hearing, TSCA Docket No. VI-676C(P). December 31, 1996.

12. USEPA, Region VI, Dallas, TX. Consent Agreement and Consent Order, TSCA Docket No. VI-676C(P). June 30, 1997.

13. USEPA, Office of Toxic Substances (OTS). Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment; final rule. **Federal Register** (47 FR 37342, August 25, 1982).

14. USEPA. Information Collection Activities OMB Responses; notice. **Federal Register** (63 FR 57123, October 26, 1998) (FRL–6180–2).

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Polychlorinated biphenyls.

Dated: August 26, 2004.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–20222 Filed 9–3–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket 03–201; FCC 04–165]

Unlicensed Devices and Equipment Approval

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document updates several technical rules for unlicensed radiofrequency devices of the Commission's rules. These rule changes will allow device manufacturers to develop expanded applications for unlicensed devices and will allow unlicensed device operators, including wireless Internet service providers'