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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPPT-2002-0013; FRL-7288-6]  
RIN 2070-AB20

Polychlorinated Biphenyls; Manufacturing (Import) Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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SUMMARY: With certain exceptions, section 6(e)(3) of the Toxic Substances Control Act (TSCA) bans the manufacture (including import), processing, and distribution in commerce of polychlorinated biphenyls (PCBs). One of these exceptions is TSCA section 6(e)(3)(B), which gives EPA authority to grant petitions through rulemaking, to perform these banned activities for a period of up to 12 months, provided EPA can make certain

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findings. In January and April 2001, the United States Defense Logistics Agency (DLA), a component of the Department of Defense (DoD), submitted two petitions to EPA to import foreign-manufactured PCBs that DoD currently owns in Japan and Wake Island for disposal in the United States. EPA is amending its rules to grant both of DLA's petitions; this action will allow DLA to engage in the import of these PCBs for disposal.

DATES: This rule shall become effective April 18, 2003, and shall expire on April 17, 2004. This rule shall be promulgated for purposes of judicial review at 1 p.m. eastern standard time on January 31, 2003.

FOR FURTHER INFORMATION CONTACT: For general information contact: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

For technical information contact: Peter Gimlin, Environmental Protection Specialist, 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) 566-0515; fax number: (202) 566-0473; e-mail address: [gimlin.peter@epa.gov](mailto:gimlin.peter@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. To Whom Does this Action Apply?

This action applies to the petitioner, the DLA. Potentially affected categories and entities include, but are not necessarily limited to:

Public Administration (NAICS Code 92), e.g., Petitioning Agency (i.e., DLA).

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 the table 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 or not this action applies to certain entities. To determine whether you or your business is 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 Get Copies of this Document or Other Related Information?

1. Docket. EPA has established an official public docket for this action under docket identification (ID) number OPPT-2002-0013. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted

by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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.

2. Electronic access. 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 at [http://www.access.gpo.gov/nara/cfr/cfrhtml\\_00/Title\\_40/40cfr761\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr761_00.html)

, a beta site currently under development. To access information about PCBs, go directly to the PCB Home Page for the Office of Pollution Prevention and Toxics at <http://www.epa.gov/pcb>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ``search,'' then key in the appropriate docket ID number.

## II. Background

### A. What Action is the Agency Taking?

In this document, the Agency is granting two petitions submitted by DLA to import PCB waste for disposal. In the absence of an exemption, import of this waste would be banned by TSCA section 6(e)(3). One petition, dated January 19, 2001, is for an exemption to import foreign-source PCBs that were used on DoD installations in Japan and are currently stored on Wake Island, a United States territory in the Pacific Ocean west of Hawaii (Ref. 9). (While Wake Island is part of the United States, it is outside the Customs Territory of the United States, and TSCA defines ``manufacture'' to include ``import into the Customs Territory of the United States.'') In addition, 40 CFR 761.99(c) does not exclude this waste from EPA's regulatory interpretation of ``import,'' because it was not present in the United States on January 1, 1979. For more information on these definitional issues, see the Federal Register documents of November 1, 2000 (Ref. 7) and March 30, 2001 (Ref. 8). The other petition, dated April 16, 2001, is to import foreign-generated PCBs owned by DoD that are currently in use or storage in Japan (Ref. 10). (The term ``foreign-generated PCBs'' is used to identify those PCBs that DoD acquired from foreign sources and that are subject to the TSCA ban on import.)

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

Section 6(e) of TSCA, 15 U.S.C. 2605(e), generally prohibits the manufacture of PCBs after January 1, 1979, the processing and distribution in commerce of PCBs after July 1, 1979, and most uses of PCBs after October 11, 1977. Section 6(e)(3)(A) of TSCA prohibits the manufacture, processing, and distribution in commerce of PCBs except for the distribution in commerce of PCBs that were sold for purposes other than resale before July 1, 1979. Section 6(e)(1) of TSCA also authorizes EPA to regulate the disposal of PCBs consistent with the provisions in TSCA section 6(e)(2) and (3). Section 6(e)(3)(B) of TSCA provides that any person may petition the Administrator for an exemption from the prohibition on 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 the 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. (15 U.S.C.2605(e)(3)(B)(i)-(ii)).

The Administrator may prescribe terms and conditions for an exemption

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and may grant an exemption for a period of not more than 1 year from the date the petition is granted. In addition, TSCA section 6(e)(4) requires that a rule under TSCA section 6(e)(3)(B) be promulgated in accordance with TSCA sections 6(c)(2), (3), and (4), which provides for publication of a proposed rule and an opportunity for an informal public hearing before a final rule can be issued.

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

EPA's procedures for rulemaking under TSCA section 6 are found under 40 CFR part 750. This part includes Subpart B--Interim Procedural Rules for Manufacturing Exemptions (40 CFR 750.10 through 750.21) that describe the required content for manufacturing exemption petitions and the procedures EPA follows in rulemaking on these petitions.

### III. Findings Necessary to Grant Petitions

#### A. Unreasonable Risk Finding.

Before granting an exemption petition, TSCA section 6(e)(3)(B)(i)

requires the Administrator to find that granting an exemption would not result in an unreasonable risk of injury to health or the environment in the United States. 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 (see generally, 15 U.S.C. 2605(c)(1)). Specifically, EPA considers the following factors:

1. Effects of PCBs on human health and the environment. In deciding whether to grant an exemption, EPA considers the magnitude of exposure and the effects of PCBs on humans and the environment. The following discussion summarizes EPA's assessment of these factors. A more complete discussion of these factors is provided in the preamble to the proposed rule: Polychlorinated Biphenyls; Manufacturing, Processing, and Distribution in Commerce Exemptions (Ref. 3), in the rulemaking record for that proposed rule (OPTS Docket-66008F), 40 CFR 761.20, and in EPA's 1996 PCB Cancer Assessment (Ref. 32).

i. Health effects. EPA has determined that PCBs cause significant human health effects including cancer, immune system suppression, liver damage, skin irritation, and endocrine disruption. PCBs exhibit neurotoxicity as well as reproductive and developmental toxicity. PCBs are readily absorbed through the skin and are absorbed at even faster rates when inhaled. Because PCBs are stored in animal fatty tissue, humans are also exposed to PCBs through ingestion of animal products (Ref. 32).

ii. Environmental effects. Certain PCB congeners are among the most stable chemicals known, and decompose very slowly once they are released in the environment. PCBs are absorbed and stored in the fatty tissue of higher organisms as they bioaccumulate up the food chain through invertebrates, fish, and mammals. Significantly, bioaccumulated PCBs appear to be even more toxic than those found in the ambient environment, since the more toxic PCB congeners are more persistent and thus more likely to be retained (Ref. 32). PCBs also have reproductive and other toxic effects in aquatic organisms, birds, and mammals.

iii. Risks. Toxicity and exposure are the two basic components of risk. EPA has concluded that any exposure of humans or the environment to PCBs may be significant, depending on such factors as the quantity of PCBs involved in the exposure, the likelihood of exposure to humans and the environment, and the effect of exposure. Minimizing exposure to PCBs should minimize any eventual risk. EPA has previously determined that some activities, including the disposal of PCBs in accordance with 40 CFR part 761, pose no unreasonable risks. Other activities, such as long-term storage of PCB waste, are generally considered by EPA to pose unreasonable risks.

2. Benefits and costs. The benefits to society of granting an exemption vary, depending on the activity for which the exemption is requested. The reasonably ascertainable costs of denying an exemption vary, depending on the individual petition. EPA takes benefits and costs into consideration when evaluating each exemption petition.

## B. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA also requires the Administrator to find that ``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 [PCBs].''

EPA considers several factors in determining whether good faith efforts have been made. For each petition, EPA considers the kind of exemption the petitioner is requesting and whether the petitioner expended time and effort to develop or search for a substitute. To satisfy this finding in the context of an exemption to import PCBs for disposal, EPA looks at why such activity should occur in the United States, including what steps the petitioner has taken to find an alternative to importing the PCBs for disposal. While requiring a petitioner to demonstrate that good faith efforts to develop a substitute for PCBs makes sense when dealing with traditional manufacturing and distribution exemption petitions, the issue of the development of substitute chemicals seems to have little bearing on whether to grant a petition for exemption that would allow the import into the United States for disposal of waste generated by the DoD overseas. EPA believes the more relevant ``good faith'' issue for such an exemption request is whether the disposal of the waste should occur outside the United States.

#### IV. Summary of the Final Action

##### A. The Petitions

1. January 19, 2001, petition to import PCBs located on Wake Island. On January 19, 2001, DLA submitted a petition for a 1-year exemption to import certain PCBs and PCB items into the Customs Territory of the United States for disposal. The waste in question consists of approximately 91 metric tons [a metric ton is 1,000 kilograms, or 2,200 pounds] of material, of which 31 metric tons DLA estimates to be liquids. Non-liquid material consists of electrical transformers, switches, circuit breakers, and debris (rags, small parts, and packaging materials). The laboratory analyses conducted by DLA indicate PCB concentrations of less than 50 parts per million (ppm) for all materials that could be tested without disassembly. DLA indicates that while it believes any components that could not be tested were excluded from this waste in question, there is a possibility that inaccessible internal components (e.g., small capacitors) of certain transformers may contain PCB constituents at or above 50 ppm.

The material is currently stored in overpack containers at a U.S. Government-owned storage site on Wake Island. DLA proposes to ship the materials in these containers to the Customs Territory of the United States using U.S. flag carriers, and in accordance with applicable laws. Upon arrival in port, the containers would be transported by Department of Transportation (DOT) permitted carriers to the destination facility. On April 16, 2001, DLA also amended its petition to include the possibility that the materials could be transported by air on U.S. military aircraft.

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DLA proposes in its January 19, 2001, petition to ship the materials to an EPA-approved PCB disposal facility. While DLA initially identified Trans Cycle Industries, Inc. (TCI) in Pell City, Alabama as

the receiving facility, it amended its petition on September 28, 2001, to include any EPA-approved PCB disposal facility as a potential receiving facility, indicating that it is premature to specify which approved facility would be contracted to treat and dispose of the waste. DLA would treat and dispose of all material in compliance with the U.S. PCB regulations at 40 CFR part 761. Generally, DLA indicates its intention is to recycle all metal components that can be decontaminated; if they are not decontaminated they would be buried in a chemical waste landfill or incinerated. Used oils or liquids would be decontaminated by dechlorination or sent for energy recovery as fuel. Non-recyclable material will be disposed of as residual solid waste. DLA also notes that EPA-approved alternative disposal methods may also be used. (Note that while DLA is proposing to send this material to a TSCA-approved facility for initial processing, this is not normally required for materials containing less than 50 ppm PCBs that have not been subject to dilution.)

A detailed summary of this petition can be found in Unit IV.A.1 of the September 17, 2002, proposal to this rule (Ref. 38)

2. April 16, 2001, petition to import PCBs located in Japan. On April 16, 2001, DLA submitted a second petition; this petition sought a 1-year exemption to import PCBs and PCB items currently in temporary storage on U.S. military installations in Japan. In revised figures provided in June 2001, DLA estimates that as much as 4,293,621 pounds, or approximately 1,952 metric tons of waste containing PCBs could be generated in Japan through the year 2006 and beyond; however, much of this material is currently still in use, and will not become waste requiring disposal for several years. Exactly how much waste can be imported under this exemption will depend on what is available for shipment for disposal while the exemption is in effect, as the exemption is limited to a 1-year maximum. The material in Japan consists of liquids, electrical transformers, capacitors, switches, circuit breakers, other miscellaneous items, and debris (rags, small parts, and packaging materials). PCB concentrations of the waste include amounts at all concentrations; however, most of the waste is at concentrations below 50 ppm PCB. Details of particular amounts and concentrations are provided in Appendix 1 (Refs. 10 and 11).

DLA proposes to package and transport, treat, and dispose of this PCB waste in the same manner as waste identified in the previous petition. DLA states it would handle and dispose of all PCBs in conformance with the PCB regulations at 40 CFR part 761. DLA notes that it has ``considerable experience and expertise in awarding and administering disposal contracts for PCB waste in the United States'' and that it will only ``use contracts with commercial firms providing such services in accordance with all applicable Federal procurement statutes and the Federal Acquisition Regulations (FAR).'' DLA states that it has not yet identified the specific companies that would receive the waste, but that only Federal and State-permitted facilities would be used. Proposed treatment would be in accordance with the options allowed by 40 CFR part 761, including landfilling, incineration, decontamination and recovery of metal, decontamination or burning of used oil, and alternative disposal technologies where allowed.

A detailed summary of this petition can be found in Unit IV.A.2 of the September 17, 2002, proposal to this rule (Ref. 38)

## B. Comments On the Proposed Rule

On September 17, 2002, EPA published a notice in the Federal Register proposing to grant both of DLA's petitions (Ref. 38). The notice also solicited comments on the proposed action and offered an opportunity for a public hearing if requested. Two comments were received on the proposed action; no person requested a public hearing.

Both comments supported the Agency's proposed decision to grant the petitions. One commenter, Perry & Spann (Ref. 39), urged EPA to grant the applicant's petition as "...the best manner to control and eliminate PCBs and any potential toxic contamination." The other commenter, Environmental Technology Council (Ref. 40), noted "...not only is there no unreasonable risk ... the risks to public health and the environment will be decreased by importing this waste for proper disposal." Additionally, this commenter questioned the need for persons wishing to import PCB waste for disposal to demonstrate "good faith efforts" under TSCA section 6(e)(3)(B)(ii). In light of the fact that the Agency has determined that the DLA petitions meet this "good faith" test, no response to this comment is necessary at this time. However, the Agency does note that it does not agree with the comment, and continues to believe it appropriate to examine whether there are good reasons that disposal of PCB wastes should occur in the United States when reviewing petitions for exemptions under TSCA section 6(e)(3) that would authorize import of PCB wastes for disposal in this country.

### C. EPA's Final Decision on Petitions

1. January 19, 2001, petition; EPA grants this petition. EPA agrees with DLA's reasoning in its petition that this waste, being primarily and perhaps exclusively at concentrations below 50 ppm PCBs, has little inherent potential to pose an unreasonable risk to health or the environment. Even more germane to this waste than the "Excluded PCB Products" processing, distribution, and use standards referred to by DLA in the petition are the disposal regulations at 40 CFR part 761, subpart D, that do not require waste below 50 ppm PCBs be disposed of in a TSCA or RCRA approved facility, provided the concentration was not affected by dilution. EPA notes the prohibition on import of PCBs at concentrations less than 50 ppm stems from the TSCA ban on "manufacture" of PCBs and is not based on any specific finding of EPA that importing PCBs at concentrations less than 50 ppm for disposal presents any unreasonable risk. Prior to 1997, EPA allowed such imports for disposal without restriction. (EPA authorized the import for disposal of PCBs at concentrations of less than 50 ppm in 1984 (Ref.37), at 40 CFR 761.20(b)(2), using the authority of TSCA section 6(e)(1). This import provision was recodified from Sec. 761.20(b) to Sec. 761.93(a)(1)(i) as part of the March 18, 1996, PCB Import for Disposal Rule (Ref. 5). On July 7, 1997, the U.S. Court of Appeals for the Ninth Circuit overturned the PCB Import for Disposal Rule, on the grounds that EPA could not rely, as it did, on TSCA section 6(e)(1) to authorize imports of PCBs for disposal. *Sierra Club v. EPA*, 118 F 3d 1324 (9th Cir. 1997). EPA amended Sec. 761.93 on June 29, 1998 (Ref.6) to reflect the *Sierra Club* decision, by changing it to state that no person may import PCBs or PCB items for disposal without a TSCA section 6(e)(3) exemption.)

EPA also concurs with DLA's assessment in its petition that transportation of this waste poses no significant risk if conducted in accordance with all applicable laws and regulations. Domestically, EPA permits the processing and distribution in commerce of PCBs and PCB items at concentrations less than 50 ppm for

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disposal (Sec. 761.20(c)(4)) without additional restriction. Higher concentration PCBs and PCB items may be processed and distributed in commerce for disposal in compliance with part 761 (which requires marking, manifesting, registration, recordkeeping, etc.). In issuing the PCB Import for Disposal Rule, EPA investigated and sought comment on the risks inherent in transportation of imported PCB waste, and determined those risks to be insignificant (Ref. 5, p. 11097).

As this waste will be processed and, where required, disposed of at EPA-approved PCB disposal facilities, EPA finds that the import and disposal of this waste will not pose an unreasonable risk of injury to health or the environment. EPA approves all TSCA PCB disposal facilities on the basis of this standard, whether the unit be an incinerator, chemical waste landfill, or alternative process, such as a decontamination or chemical dechlorination operation. Similarly, EPA has previously determined that other disposal options for PCB waste at concentrations below 50 ppm, such as burning used oil for energy recovery in compliance with 40 CFR 761.20(e), pose no unreasonable risk to health or the environment.

Moreover, any risks inherent in transportation and disposal must be weighed against the risks of continued long-term storage. As DLA noted in its petition, Wake Island is a part of the United States and under TSCA it is entitled to the protection against unreasonable risk of injury to health or the environment. Generally, EPA considers long-term storage of PCB waste to pose an unacceptable risk due to threat of leaks and spills, and with certain limited exceptions, EPA limits storage for disposal of PCB waste to 1-year from the date the waste was generated (40 CFR 761.65(a)). As discussed at length by EPA in recent Federal Register documents (Refs. 7 and 8), the long-term storage of PCBs in U.S. territories and possessions outside the Customs Territory of the United States, such as Wake Island, often poses additional risks; examples of problems cited included risk of severe storms, sensitive ecosystems, limited available land, low elevation, and water resources that are vulnerable to contamination. For instance, while 40 CFR 761.65(b)(1)(v) stipulates that PCB waste storage sites should not be located below the 100-year flood water elevation, the highest elevation on Wake Island is only 6 meters above sea level. Therefore, EPA concludes that removal of this PCB material from Wake Island in the most expeditious manner possible will reduce risk of injury to health and the environment.

Other benefits to the United States will be realized through the granting of this petition, as well. One of EPA's purposes in promulgating 40 CFR 761.99(c) was to address the inequitable treatment of the territories outside the Customs Territory of the United States that was inadvertently created by the manufacturing ban of TSCA section 6(e)(3) (Refs. 7 and 8). EPA believes that granting this exemption will likewise allow waste stored in the territories to be managed and disposed of in a manner similar to waste generated in other States, and

it will prevent the Pacific Island territories of the United States from bearing any undue burden for the disposal of such waste. Furthermore, as this waste is the property of the U.S. Government, and it was generated by the U.S. Government while conducting its affairs abroad, EPA believes the U.S. Government has an obligation to allow this waste to be safely disposed of under its jurisdiction in the United States. A grant of this petition will allow the United States Government to solve one of its own toxic waste problems without relying on other countries' disposal resources. Thus, EPA finds that DLA has provided adequate justification for a finding that the activity proposed in this petition would not pose an unreasonable risk of injury to health or the environment.

EPA also finds that DLA has made good faith efforts to find alternatives to import into the Customs Territory of the United States. EPA agrees with DLA's contention in its petition that Wake Island is an unsuitable location for attempts at on-site disposal, due to its extremely remote location, small size, lack of facilities, and fragile environment. In addition, as DLA notes in its petition, decontamination procedures typical for this type of waste would not eliminate all PCBs and the concomitant need for an exemption. EPA also believes DLA has made good faith efforts to find disposal alternatives in other countries; indeed, the waste came to Wake Island as a result of an unsuccessful effort to dispose of it abroad. EPA is well aware of DLA's growing difficulty in disposing of its foreign-manufactured waste abroad, a problem outlined in DLA's report to Congress in 1999 (Ref. 33), and EPA has been aware of DLA's substantial efforts since April 2000 to identify options for disposal of this particular waste in a responsible manner, including disposal in another country. EPA accepts DLA's assessment that with the notoriety that is now attached to this particular waste shipment and the difficulty of satisfying Basel Convention obligations, acceptance of this waste by another country for disposal is unlikely to ever occur. EPA further notes that disposal in a facility in the United States, but outside the Customs Territory of the United States, e.g., in another Pacific territory, is not an alternative because no suitable facilities exist. Finally, EPA also believes it relevant to the good faith issue that, as noted earlier, this waste was generated by the U.S. Government while conducting its affairs abroad, and thus the United States bears some obligation to provide for the safe disposal of this waste in the United States if it can not be easily disposed elsewhere.

For these reasons, EPA finds DLA has satisfied the exemption criteria of TSCA section 6(e)(3)(B) and grants this petition.

2. April 16, 2001, petition; EPA grants this petition. As with the previous petition, EPA concurs with DLA's assessment that transportation of this waste will pose no unreasonable risk if conducted in accordance with all applicable laws and regulations. As noted in Unit IV.C.1., EPA permits the domestic processing and distribution in commerce of PCBs and PCB items for disposal in compliance with part 761, and in issuance of the PCB Import for Disposal Rule EPA investigated and sought comment on the risks inherent in transportation of imported PCB waste, and determined those risks to be insignificant (Ref. 5, p. 11097). Also, as discussed in Unit IV.C.1. in regard to the Wake Island petition, EPA finds generally that the disposal of imported PCB waste at an EPA-approved PCB disposal facility poses no unreasonable risks as these facilities have been approved on the basis of that standard.

EPA believes that granting this petition will benefit the United

States in several ways. As DLA notes in its petition, the continued long-term storage of PCB waste on U.S. military facilities in Japan poses risks of exposure to U.S. personnel and the environment--risks that can be mitigated through the action proposed in this petition. Also, the reduction of risk to Japanese citizens must be considered advantageous, especially in light of the heightened concerns over PCBs in that country and the sensitivities surrounding the U.S. military's presence in Japan. Currently, the U.S. military is in the awkward position of explaining to its Japanese hosts that it can not remove its toxic waste from their country because United States law does not allow the waste to be sent to the United States. As with the Wake Island petition, granting this

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petition allows the United States to accept responsibility for solving its own toxic waste problems. Thus, EPA finds that the activity proposed in this petition would not pose an unreasonable risk of injury to health or the environment.

EPA believes that DLA has demonstrated good faith efforts to find alternatives to disposal of this PCB waste in the United States. EPA is aware of the lack of adequate PCB disposal capacity in Japan, to which DoD's large inventory of PCB waste is itself testimony. While EPA is aware that some recent efforts are underway to establish new disposal capacity in Japan (Refs. 34 and 35), EPA believes it will be some time before these new facilities are operational and the large inventories of commercial and government PCB waste that have accumulated over the years in Japan will be eliminated. Moreover, as DLA notes in its petition, even assuming adequate disposal capacity becomes available in Japan in the near future, there are significant political obstacles that are likely to prevent the U.S. military disposing of its PCB waste in Japan, either off-site at a commercial facility or on-site at a U.S. base.

EPA is generally aware of the increasing difficulties DoD has in disposing of its foreign-generated PCB waste abroad, as described in its report to Congress, and as evidenced by the difficulties with the waste now stored on Wake Island. EPA also acknowledges the peculiar circumstances of DoD's PCBs, which, while present in one country, are owned by another's government, leading to significant difficulty in providing Basel notification to third countries. Given these difficulties, EPA concurs with DLA's conclusion that disposal in a third country is not a viable option for this waste. And, as stated earlier, EPA also believes it is relevant to the good faith issue that since this waste was generated by the U.S. Government while conducting its affairs abroad, the United States bears some obligation to provide for the safe disposal of this waste in the United States if it can not be easily disposed of elsewhere.

For these reasons EPA finds DLA has satisfied the exemption criteria of TSCA section 6(e)(3)(B) and grants this petition.

## V. References

1. USEPA, Office of Toxic Substances (OTS). Polychlorinated

Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Final Rule. OPTS-60001. Federal Register (44 FR 31514, May 31, 1979).

2. USEPA. Polychlorinated Biphenyls (PCBs); Expiration of the Open Border Policy for PCB Disposal; Notice. OPTS-62008. Federal Register (45 FR 29115, May 1, 1980).

3. USEPA. Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, and Distribution in Commerce Exemptions; Proposed Rule. OPTS-66008F. Federal Register (53 FR 32326, August 24, 1988).

4. USEPA. Disposal of Polychlorinated Biphenyls; Proposed Rule. OPPTS-6009A. Federal Register (59 FR 62788, December 6, 1994) (FRL-4167-1).

5. USEPA. Disposal of Polychlorinated Biphenyls (PCBs); Import for Disposal; Final Rule. OPPTS-66009F. Federal Register (61 FR 11096, March 18, 1996) (FRL-5354-8).

6. USEPA. Disposal of Polychlorinated Biphenyls (PCBs); Final Rule. OPPTS-66009C. Federal Register (63 FR 35384, June 29, 1998) (FRL-5726-1).

7. USEPA. Polychlorinated Biphenyls (PCBs); Return of PCB Waste from U.S. Territories Outside the Customs Territory of the United States; Proposed Rule. OPPTS-66020. Federal Register (65 FR 65654, November 1, 2000) (FRL-6750-6).

8. USEPA. Polychlorinated Biphenyls (PCBs); Return of PCB Waste from U.S. Territories Outside the Customs Territory of the United States; Final Rule. OPPTS-66020A. Federal Register (66 FR 17468, March 30, 2001) (FRL-6764-9).

9. DoD, DLA. Petition from Lieutenant General, Henry T. Glisson, Director, to Carol Browner, Administrator, EPA. Subject: Enclosed petition. January 19, 2001. 15 pp. with attachments.

10. DoD, DLA. Letter from Lieutenant General, Henry T. Glisson, Director, to Christine Todd Whitman, Administrator, EPA. Subject: Enclosed petition. April 16, 2001. 12 pp. with attachments.

11. DoD, DLA. Electronic mail from Karen Moran, Environmental Quality Division, to Peter Gimlin, National Program Chemicals Division, OPPT, EPA. Subject: Updated inventory, Appendix 1 to April petition. June 28, 2001. 2 pp. with attachments.

12. DoD, DLA. Letter from Richard J. Connelly, Director, DLA Support Services, to Peter Gimlin, Office of Pollution Prevention and Toxics, EPA. Subject: Revisions to both petitions. September 28, 2001. 2 pp. with attachments.

13. Cabinet set to approve two bills on PCB disposal. The Japanese Times Online. February 20, 2001. 3 pp.

14. United Nations Environment Programme (UNEP). Inventory of World-wide PCB Destruction Capacity. First Issue. December 1998. 72 pp.

15. United Nations Environment Programme (UNEP). Survey of Currently Available Non-Incineration PCB Destruction Technologies. First Issue. August 2000. 70 pp.

16. Defense Agency will inspect PCB Storage. The Yomiuri Shimbun. Tokyo. August 20, 2000. 2 pp.

17. Pollution at Okinawa Bases Cannot be Left Uncorrected. Asahi Shimbun. January 14, 1999. 3 pp.

18. David Armstrong. U.S. Presence on Foreign Soil is Tainted. Boston Globe. November 15, 1999. 3 pp.

19. Danielle Knight. Environment: Asian Women Demand Cleanup of U.S. Military Bases. Inter Press Service. October 16, 1998. 3 pp.

20. Japan: Probe Fails to Confirm Source of Pollutant at Kadena Air Base. Kyodo News Service. September 28, 1998. 1 p.

21. High Level of PCB Detected in Okinawa. Jiji Press Ticker Service. February 21, 1997. 1 p.
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23. MOFA, Environment Agency to Investigate Base PCB Dumping. Ryukyu Shimpo. August 19, 1998. 4 pp.
24. Editorial: Probe Pollution at U.S. Bases. Ryukyu Shimpo. August 18, 1998. 3 pp.
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26. U.S. Rejects Request for PCB Test at Kadena. Japan Economic Newswire. November 25, 1998. 1 p.
27. Agency Concerned about U.S. Base Pollution. Jiji Press Ticker Service. February 21, 1992. 1 p.
28. Japan to Check U.S. Base Employees for Waste Contamination. Asahi News Service. February 18, 1992. 2 p.
29. Sagamihara City. Letter from Tokio Kanero, Councilman, to Chief, DRMO Sagami. Subject: FOIA request for information on hazardous material shipments. March 3, 1999. 1 p.
30. Sagamihara City. Letter from Tokio Kanero, Councilman, to Paul Ortiz, Asia Zone Manager, DRMS International. Subject: March 3, 1999, FOIA request pertains to PCBs, heavy metals and asbestos only. March 14, 1999. 1 p.
31. DoD, DLA. Letter from Vice Admiral Keith W. Lippert, Director, to Christie Whitman, Administrator, EPA. Subject: Opportunity to meet regarding petitions. November 14, 2001. 1 p.

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32. USEPA, Office of Research and Development (ORD). PCBs Cancer Dose-Response Assessment and Application to Environmental Mixtures. EPA600P-96001F. September 1996. 75 pp. OPPTS-66009C (B3-026)
33. DoD. Report to Congress: Foreign-Manufactured PCBs at U.S. Military Installations Overseas. March 1999. 20 pp.
34. USEPA, Region 9. Electronic Mail from Max Weintraub to Peter Gimlin, EPA, OPPT, Re: Startech Environmental's 8/23/2001 Press Release. September 5, 2001. 2 pp.
35. Japan Government Submits Legislation Requiring Destruction of All PCBs in 15 years. BNA International Environment Daily. March 23, 2001. 1 p.
36. USEPA. Hazardous Waste Management System; Notification Concerning the Basel Convention's Potential Implications for Hazardous Waste Exports and Imports. Federal Register (57 FR 20602, May 13, 1992).
37. USEPA. Toxic Substances Control Act; Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Exclusions, Exemptions and Use Authorizations; Final Rule. OPPTS-62032A. Federal Register (49 FR 28172, July 10, 1984).
38. USEPA. Polychlorinated Biphenyls; Manufacturing (Import) Exemptions; Proposed Rule. OPPT-2002-0013. Federal Register (67 FR 58567, September 17, 2002) (FRL-7176-1).
39. Perry & Spann. Letter from Victor Alan Perry, Esq. to EPA Document Control Office. Subject: Comment on OPPT-2002-0013. October 4, 2002. 1 p.
40. Environmental Technology Council. Letter from Scott Slesinger, Vice President for Governmental Affairs, to EPA Docket. Subject:

## VI. Statutory and Executive Order Reviews

### A. Regulatory Planning and Review

Under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), it has been determined that this action is not a ``significant regulatory action'' subject to review by the Office of Management and Budget (OMB), because this action is not likely to result in a rule that meets any of the criteria for a ``significant regulatory action'' provided in section 3(f) of the Executive order.

### B. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the Federal Register, listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

This rule does not impose any new information collection burden. DLA is subject to the existing EPA regulations regarding the storage and disposal of PCBs in 40 CFR part 761. OMB has previously approved the information collection requirements contained in 40 CFR part 761 under the PRA, and has assigned OMB Control No. 2070-0112 (EPA ICR No. 1446.07).

The annual public burden approved under OMB Control No. 2070-0112, is estimated to average 0.57 hours per response. As defined by the PRA and 5 CFR 1230.3(b), ``burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of this ICR document may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, by e-mail at [auby.susan@epa.gov](mailto:auby.susan@epa.gov), or by calling (202) 566-1972. Copies may also be downloaded from the Internet at <http://www.epa.gov/icr>. Include the EPA ICR number and/or OMB control number in any correspondence.

### C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because this rule will not impose any requirements on small entities. Under section 601 of RFA, ``small entity'' is defined as:

1. A small business that meets the Small Business Administration size standards codified at 13 CFR 121.201.
  2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.
  3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.
- In this rule, EPA is granting two petitions by DLA to import PCBs for disposal. Only DLA, which is not a small entity, will be regulated by this rule.

### D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, (UMRA), Public Law 104-4, EPA has determined that this action does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Nor does this rule contain regulatory requirements that might significantly or uniquely affect small governments. EPA is granting two petitions by DLA to import PCBs for disposal. DLA is required to comply with the existing regulations on PCB disposal at 40 CFR part 761. The only mandate imposed by this rule is imposed on DLA. In addition, EPA has determined that this rule does not significantly or uniquely affect small governments. The DLA petitions state that the PCBs will be disposed of in facilities approved to handle PCBs. No new facilities, which could affect small government resources if a permit is required, are contemplated. EPA believes that the disposal of PCBs in previously approved disposal facilities in the amounts specified in this rule would have little, if any, impact on small governments. Thus, this rule is not subject to the requirements of UMRA sections 202, 203, 204, and 205.

### E. Federalism

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ``meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ``Policies that have federalism implications'' are defined in the Executive order to include regulations that have ``substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government.''

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. EPA is granting two petitions from DLA to import PCBs and dispose of them in accordance with existing regulations. There will be no direct effects on the States, nor will there be any impact on the relationships between the various levels of government with respect to PCB disposal issues. Thus, Executive Order 13132 does not apply to this rule.

#### F. Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (59 FR 22951, November 9, 2000), requires EPA to develop an accountable process to ensure ``meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This rule does not have tribal implications, as specified in Executive Order 13175. EPA is granting two petitions from DLA to import PCBs and dispose of them in facilities approved to handle PCBs in accordance with existing regulations. EPA does not believe that this activity will have any impacts on the communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

#### G. Children's Health

This rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not economically significant as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. EPA is granting two petitions from DLA to import PCBs and dispose of them in facilities approved to handle PCBs in accordance with existing regulations. EPA believes that the import and disposal of the amount of PCBs specified in the exemption petitions will present little, if any, additional risk to persons living in the vicinity of the approved disposal facilities or in the communities through which the PCBs may be transported.

#### H. Energy Effects

This rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

## I. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

## J. Environmental Justice

This action does not involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

## K. Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630, entitled Governmental Actions and Interference with Constitutionally Protected Property Rights (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the Executive order.

## L. Civil Justice Reform

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled Civil Justice Reform (61 FR 4729, February 7, 1996).

## VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Act of 1996, generally provides that before a final rule may take effect, the Agency promulgating it must submit a final rule report, which includes a copy of the final

rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this final 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 final rule in the Federal Register. This final rule is not a ``major rule'' as defined by 5 U.S.C. 804(2).

Lists of Subjects in 40 CFR Part 761

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

Dated: January 23, 2003.  
Stephen L. Johnson,  
Assistant Administrator for Prevention, Pesticides and Toxic  
Substances.

Therefore, 40 CFR chapter I is amended as follows:

PART 761--[AMENDED]

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

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

2. Section 761.80 is amended by adding a new paragraph (j) to read as follows:

Sec. 761.80 Manufacturing, processing and distribution in commerce exemptions.

\* \* \* \* \*

(j) The Administrator grants the following petitions to import PCBs and PCB items for disposal pursuant to this part:

(1) United States Defense Logistics Agency's January 19, 2001, petition for an exemption for 1 year to import PCBs and PCB Items stored on Wake Island and identified in its petition for disposal. This exemption shall expire on April 17, 2004.

(2) United States Defense Logistics Agency's April 16, 2001,

petition for an exemption for 1 year to import PCBs and PCB Items  
stored or in use in Japan and identified in its petition, as

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amended, for disposal. This exemption shall expire on April 17, 2004.  
\* \* \* \* \*

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