OPPT-2002-0013-0001

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because the proposed rule would merely clarify existing requirements. Therefore, the existing Information Collection Request (ICR) documents for these rules have not been revised. In developing the final rule, this will be analyzed again and, if it is determined that there are new information collection requirements resulting from the final rule, the ICR for these rules will be revised.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a "significant energy action," as defined in to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. As noted earlier, this action would simply clarify existing requirements and would not impose any new requirements, and thus would not affect the supply distribution, or use of energy.

List of Subjects

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 71

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirement.

Dated: September 4, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

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

2. In § 70.6(c)(1) by revising the first sentence to read as follows:

§ 70.6 Permit content.

* * * * *

(c) * * *

(1) Compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. * * *

* * * * *

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

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

2. In § 71.6(c)(1) by revising the first sentence to read as follows:

§ 71.6 Permit content.

* * * * *

(c) * * *

(1) Compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. * * *

* * * * *

[FR Doc. 02–23588 Filed 9–16–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPPT–2002–0013; FRL–7176–1]

RIN 2070–AB20

Polychlorinated Biphenyls; Manufacturing (Import) Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

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 to perform these activities for a period of up to 12 months, provided EPA can make certain findings by rule. 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. In this document, EPA is proposing to grant both of DLA's petitions and is soliciting public comment on this decision; if finalized, this decision to grant would allow DLA to engage in the import of these PCBs for disposal.

DATES: Comments, identified by the docket ID number OPPT–2002–0013, must be received by EPA on or before October 17, 2002.

If requested by October 11, 2002, an informal hearing will be held in Washington, DC on a date to be announced later in the **Federal Register**.

ADDRESSES: Comments and hearing requests may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0013 in the subject line on the first page of your response.

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.

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.

SUPPLEMENTARY INFORMATION:

I. General Information

A. To Whom Does this Action Apply?

Primarily, this action applies to the petitioner, the DLA. However, you may be potentially affected by this action if you process, distribute in commerce, or dispose of PCB waste generated by others, i.e., you are an EPA-permitted PCB waste handler. Potentially affected categories and entities include, but are not necessarily limited to:

Categories	NAICS codes	Examples of potentially affected entities
Public Administration	92	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 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 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, 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 submit or 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. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. 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. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA can not read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA can not read your comment due to technical difficulties and can not contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2002–0013. The system is an "anonymous access " system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to oppt.ncic@epa.gov, Attention: Docket ID Number OPPT–2002–0013. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access " system. If you

send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (DCO) (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPPT–2002–0013.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2002–0013. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Proposing to Take?

In this document, the Agency is proposing to grant 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 never entered the Customs Territory prior to 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 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. As discussed in Unit IV., EPA has taken 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. Proposed Disposition of Pending Exemption Petitions

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 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.

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 their 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 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.)

i. *Information regarding no unreasonable risk.* EPA requires that petitioners explain the basis of their contention that unreasonable risk of injury to health or the environment would not result from the granting of their petition (40 CFR 750.11(c)(6)). In its petition, DLA makes several arguments that the proposed activity would present no unreasonable risk. First, DLA notes the low levels of PCB contamination involved in this waste, i.e., <50 ppm for all tested material. As DLA notes, EPA allows the processing, distribution in commerce, and use of "excluded PCB products" that contain <50 ppm PCBs because doing so does not generally present an unreasonable risk to health or the environment. Excluded PCB products include transformers and other electrical equipment, and used oils containing <50 ppm PCBs (subject to certain provisions, see definition § 761.3).

Secondly, DLA explains that the materials would be managed in accordance with applicable laws, ensuring its safe disposition. DLA notes the waste will be packed and shipped in compliance with DOT and EPA regulations, with appropriate bracing, over packs, secondary spill containment, etc. DLA cites its safe performance record and those of its contractors, who over the last 4 years have managed some 1.3 million pounds of U.S.-manufactured PCB items returned from Japan without incident. Regarding disposal risks, DLA notes that "EPA licensing of the proposed disposal facilities and approval of the proposed treatment methods assure that exempted import and disposal of the material will present no unreasonable risk of injury to health or the environment" (Ref. 1, p.3).

Finally, in assessing risks, DLA argues that any risks inherent in shipment and disposal are far outweighed by the risks inherent in continued storage of the materials in their present location on Wake Island. DLA notes that Wake Island, as a U.S. territorial possession, is defined by TSCA section (3)(13) and (3)(14) as part of the United States, and is entitled to statutory protection against unreasonable risk of injury to health or the environment. DLA also cites a recent **Federal Register** document (Ref. 8, p. 65656) in which EPA stated:

> The prohibitions and restrictions on PCBs under TSCA Section 6(e) and its implementing regulations protect not only the United States citizens in the 50 states, but United States citizens in all the territories and possessions of the United States. PCBs in the 50 States and in the territories and possessions must be managed and disposed of in a manner that does not present an unreasonable risk to health or the environment.

DLA also cites EPA's March 18, 1996, Import for Disposal Final Rule (Ref. 5, p. 11099):

> Based on the persistence of PCBs in the global environment and EPA's finding that any exposure to human beings or the environment may be significant, EPA believes that the safe disposal of PCBs in approved U.S. facilities poses less risk of injury to health or the environment in the United States than the continued presence of PCBs in other countries, since proper disposal in this country provides protection against possible hazards from improper disposal elsewhere.

DLA concludes that granting its petition "will eliminate the risks cited above by removing these PCBs from Federal property that can not provide suitable disposal and permitting proper disposal in a manner limiting releases to the environment to the levels permitted by U.S. regulations."

EPA asks petitioners to estimate the economic costs of denial of their petition (40 CFR 750.11(c)(8)). DLA estimates that the annual cost of long-term storage on Wake Island is $40,000, covering inspection, labor, and container replacement, but excluding the costs of any possible site remediation that could result from a spill if it were to occur. DLA estimates costs of transport and alternative disposal in another country, would range from approximately $1.15 million to $3 million, as opposed to approximately $0.85 million for disposal in the United States. However, as discussed in Unit IV.A.1.ii., DLA believes that disposal in another country is precluded by political and policy reasons. DLA also estimates that processing of this waste on-site at Wake Island would cost approximately $1.2 million, but as discussed in Unit IV.A.1.ii., on-site treatment would not eliminate the need for an exemption, nor is it desirable for other reasons.

ii. *Information regarding good faith efforts.* DLA submits in its petition that it has made good faith efforts to find alternatives to disposal of the material within the Customs Territory of the United States, and that there is no reasonable alternative available. DLA notes that although most of the PCBs in question are known to be at low enough levels (<50 ppm) that they could be disposed of legally in a solid waste landfill (as opposed to a TSCA or Resource Conservation and Recovery Act (RCRA) chemical waste landfill), that approach is not appropriate for Wake Island because of its small land area and low elevation. (The Wake Island atoll's land area is 6.5 square kilometers, and its highest point is only 6 meters above sea level). Moreover, DLA notes there are no facilities on Wake Island to provide on-site processing or treatment for disposal off-island. DLA examined the alternative of transporting and constructing such processing or treatment facilities on Wake Island, and concluded the following:

> To be properly processed, these PCB materials should be separated into three streams: 1) metallic components to be recycled; 2) used oils to be treated; and 3) non-recyclable material to be disposed of as residual solid wastes. According to TCI, a disposal contractor who analyzed this issue for DLA, the cost of shipping a mobile PCB treatment system from the United States to Hawaii and back, and operating the system on Wake Island to clean and initially process the shipment, would be $1.2 million. Additional and potentially significant costs under this scenario include shipping the system from Hawaii to Wake Island and back; providing food and shelter for contractor personnel; providing power and water to operate the mobile system; and completing additional required environmental documentation and other management/oversight activities.
>
> This processing would also leave large quantities of metallic components and non-recyclable materials to be disposed of off-island. In addition, on-island processing would be an incomplete solution that would not obviate the need for this petition, because this process would leave the Government with thousands of pounds of residual PCB-containing materials still requiring a 6(e) petition to be shipped into the United States for disposal. These requirements, including the cost of shipping these materials to proper disposal facilities, would also significantly increase the Government's overall on-site disposal costs.
>
> Processing on-site at a newly established facility will make it more difficult to mitigate the unavoidable risks involved in such activities. Serious PCB spills, worker accidents, and other incidents will likely be more difficult to address in such a remote location. Additional risks may be involved in the creation of the facility on Wake Island, including equipment transportation and construction activities. In light of the concerns cited above, engaging in such processing activities on Wake Island would present significantly greater risks than shipping the materials to a site where the infrastructure and facilities already exist to process them properly.

DLA also investigated the possibility of disposal of this waste in another country. DLA reports there are no PCB disposal facilities in Japan where this waste originated, and DLA's attempt to ship the waste to a disposal facility in Canada was unsuccessful, as explained in detail by DLA in a footnote to its petition. To briefly summarize, in

March 2000, DLA contracted to have this waste shipped to a disposal facility in Canada as non-PCB waste, however, due to public protests and concerns of the Canadian government, the waste was not unloaded in Vancouver, but was instead returned to Japan the next month. In May 2000, to allay Japanese concerns about the waste remaining in Japan, the waste was moved to the U.S. territory of Wake Island for interim storage while DLA sought another disposal solution.

In consequence of the failure of this initial disposal attempt, DLA investigated disposal options in other countries; an effort that it summarized in its petition:

> The DLA and its primary disposal contractor made extensive contacts over a period of several months with disposal facilities in numerous locations outside the United States in an effort to identify firms who could dispose of this shipment. The DoD also consulted at length with State Department officials whose responsibilities included international environmental matters and the nations under consideration. The variety of problems identified in these contacts regarding overseas disposal of this shipment resulted in a consensus that use of existing facilities in other developed countries was not a reasonable alternative. The final, coordinated Government position is that this option should be eliminated from further consideration. Aside from these countries, there are no other nations with suitable facilities that could accept the material, given the constraints of Article 11 of the Basel Convention. Even if other countries could accept these wastes, activist groups could be expected to oppose United States disposal of its waste in third countries, because the Unites States has the technical capability to properly dispose of the hazardous materials itself.

Therefore, DLA concludes that despite its diligent effort to identify disposal options both on-site and in other countries, there are no practicable alternatives to disposal in the Customs Territory of the United States.

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 could be imported under this exemption would vary depending on when the final exemption would be in effect, as the exemption is limited to a 1–year maximum. For example, if EPA were to grant a 1–year exemption to import that would expire on December 31, 2003, then according to DLA up to 2,104,189 pounds, or approximately 956 metric tons of material could theoretically be available for shipment for disposal (Appendix 1: totals for CY2001 + CY2002 + 2003). 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. 9 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 notes compliance is required with the International Maritime Dangerous Goods (IMDG) Code/International Maritime Organization (IMO), International Civil Aviation Organization (ICAO) Technical Instructions, the International Air Transport Association (IATA) Dangerous Goods Code, UN Recommendations on the Transport of Dangerous Goods Code, and 49 CFR parts 100–199. DLA further notes proper handling and shipping shall include blocking, bracing, over packing, and inclusion of spill containment devices as required by applicable transportation regulations.

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 technologies where allowed.

i. *Information regarding no unreasonable risk.* As in the previous petition, DLA notes that the materials in question would be managed in accordance with all applicable laws and regulations. Once in the United States, the PCB waste would be transported, handled, treated and disposed of in compliance with the PCB regulations at 40 CFR part 761. DLA states they would only contract with companies with the required Federal and State-permitted storage, treatment, and disposal facilities for dealing with PCBs and PCB items. DLA notes that it and its contractors "have extensive experience in safely returning U.S.-manufactured PCBs and PCB items to the United States for disposal," and that "over the last four years DLA has returned over 1.3 million pounds of U.S.-manufactured PCBs and PCB items from Japan to the United States using the same standards and procedures described above with no known spills or safety problems."

In contrast, DLA notes that the continuing storage of PCBs at U.S. facilities in Japan is problematic. As discussed in Unit IV.A.2., DoD currently has a considerable amount of PCB waste in storage at its facilities in Japan, and more will accumulate over the coming years as equipment is retired from use and contaminated sites are cleaned up. DLA notes that due to the unavailability of disposal capacity much of DLA's foreign-manufactured PCB waste inventory has been in storage for years; some facilities, including the largest PCB storage facility at Sagami, are at or near their storage capacity, and movement of PCB waste presently in storage is frequently necessary to accommodate additional PCBs taken out of service. DLA summarizes the risks of this situation as follows:

> Continued, indefinite storage and lack of in-country disposal capacity increase the risk of exposure to U.S. military personnel, to people living in and around the U.S. military installations where the PCBs are stored, and to the environment should spills occur due to human error, severe weather such as typhoons, or earthquakes. Storage containers deteriorate, increasing the likelihood of PCB exposure to personnel who must monitor such items and repack them if they suspect leakage. Frequent handling creates multiple opportunities for spills or exposures. Long-term storage may increase DoD's liability and create clean-up costs if accidental spills occur. All of these scenarios potentially increase exposure to U.S. personnel, local citizens, and to the ground and water. This problem is magnified in Japan, because the installations where these materials are located are relatively small, storage space is at a premium, and the surrounding civilian communities are located in very close proximity to the stored PCBs. PCBs and PCB items in indefinite storage, therefore, present a greater risk to human health and the

environment than PCBs stored for disposal in the mainland United States.* * *

DLA further notes that EPA expressed concerns about long-term storage in the PCB Import for Disposal Rule (Ref. 5, p. 11096):

EPA believes that PCB wastes which are not disposed of for extended periods of time or which are not disposed of in facilities providing equivalent protection from release to the environment may pose an unreasonable risk of injury to health and the environment.

As in its previous petition, DLA cites the concerns EPA expressed in 1996 about the benefits of safe disposal of PCBs in the United States as opposed to their continued presence in other countries. Finally, DLA notes that EPA mandates a 1–year storage for disposal limit for PCB waste, and concludes that "the same long-term storage and risk concerns that apply to facilities in the U.S. should also apply to DoD installations overseas."

Beyond the immediate environmental risk, DLA describes other benefits to the United States that it believes would result from the granting of its petition:

* * * failure of the United States to permit disposal of waste it generated overseas in furtherance of its national interests not only strains relations at the national government level, but also exacerbates tensions between each facility with such materials and the local community. In 1968, a tragic human poisoning episode in Western Japan affected over 1,000 people and caused 22 deaths. The "Yusho" or "rice oil disease" was attributed to the consumption of rice bran oil contaminated with PCBs and served as a catalyst for current PCB bans such as those imposed by TSCA. As a result of this highly publicized incident, Japanese citizens exhibit particular sensitivity to PCB issues. Denial of this petition could adversely affect delicate U.S.-Japan relations over the presence and operation of the U.S. Armed Forces in Japan. The presence of PCBs on U.S. Military bases in Japan has, in fact, attracted significant adverse attention from Japanese politicians, the Japanese press, Japanese environmental groups and local citizens. Regular surveillance of DoD storage operations in Sagamihara and demands for inspections and sampling have occurred since a member of the U.S. Congress released a report outlining the storage and presence of PCBs and other hazardous materials on U.S. bases in Japan. The perceived failure by the U.S. Military to resolve the current PCB disposal dilemma posed by the TSCA importation ban invites unwarranted claims that the U.S. Military is neglecting its environmental responsibilities.

DLA concludes:

Granting this petition presents no unreasonable risks and will serve to mitigate or lessen the risk of injury to public health and the environment of Japan. Petition approval will demonstrate environmentally responsible behavior by the United States and further the United States' interests by maintaining good relations with a valued ally as it will significantly reduce the risk of injury to the health of persons of both nations and to the environment in Japan. Granting this petition will eliminate the risks cited above by removing these PCBs from U.S. Military facilities in a country that can not provide suitable disposal in a manner limiting releases to the environment to the levels permitted by U.S. regulations.

In response to the request that petitioners estimate the economic costs of denial, DLA concluded that the economic consequences of a petition denial "are not readily susceptible to objective quantification." DLA did note, however, that indirect costs, such as those stemming from international controversy over disposal abroad or those related to continued storage and exposure risks in Japan, "while difficult to quantify, are of potentially greater magnitude than the direct costs of petition denial."

ii. *Information regarding good faith efforts.* DLA argues in its petition that disposal of its PCBs in Japan is not an available disposal option:

There are currently no Japanese government permitted operators or companies, or adequate facilities to provide treatment or processing of these items on-site at DoD Military installations in Japan. A report by UNEP [United Nations Environment Program], published in August 2000, lists three companies in Japan offering alternate technology for processing and treatment of PCBs. As far as DLA can determine at this time, these technologies are demonstration technologies that lack permits for operation in Japan. Additional risks and negative public perception by the local Japanese communities may be involved in the creation of such a facility, including objections to equipment transportation and construction activities. In light of the concerns cited above, engaging in on-site processing activities using a temporary facility in Japan would present significantly greater public relations problems and potentially greater environmental and health risks than shipping the materials to a U.S. domestic site where the infrastructure and facilities already exist to process them properly. Finally, DoD policy currently prohibits the treatment of this material on a U.S. installation. In addition, even if DoD policy changed, any PCB treatment on Japanese territory on a U.S. installation would require permission from appropriate Japanese government officials.

DLA also notes elsewhere that even if a commercial or government disposal facility is established in Japan in the near future, DLA's inventory of PCBs is unlikely to receive first priority for access to that facility ahead of the large stockpiles of commercial or Japanese government PCBs in long-term storage in Japan.

DLA further argues that disposal of this waste in another country is not a viable option. DLA cites its 1999 Report to Congress as background on the difficulty it faces in finding suitable disposal alternatives for PCB waste generated by DoD overseas. DLA also notes the difficulty it had in its previous attempt to ship low-level PCBs from Japan to Canada for disposal (resulting in the other petition that is the subject of this proposed rule). In particular, DLA discusses the difficulty of shipping waste from Japan to other countries posed by the Basel Convention (Ref. 36):

In 1998 DLA awarded a contract for the proper disposal of PCBs from Japan to an acceptable facility outside the United States. However, because the PCBs fall under the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal (Basel), a DLA contractor was required to comply with the notice and consent regime imposed by Basel. Unfortunately, the DLA contractor was not able to persuade Japanese officials to prepare the necessary Basel notifications. DLA and its primary disposal contractor made extensive contacts over a period of several years with Japanese officials and disposal facilities in numerous locations outside the United States in an effort to identify firms who could dispose of such waste while satisfying Basel requirements. DoD also consulted at length with State Department officials in Japan and the United States whose responsibilities included international environmental matters. Although Japanese officials seemed willing to allow DoD to remove the PCBs pursuant to the United States—Japan Status of Forces Agreement (SOFA), the DLA contractor was unable to identify acceptable third countries that could receive the PCBs without Basel notification from Japan. The apparent preference by Japanese officials for shipment to the United States under the SOFA could not be accommodated due to the U.S. TSCA import ban. The variety of problems identified in various contacts regarding overseas disposal of PCBs resulted in a consensus that use of existing facilities in other developed nations was not a reasonable alternative.

DLA concludes that it has made every reasonable effort to locate appropriate disposal sites outside the United States and that it has accordingly satisfied the good faith efforts criteria necessary for an exemption.

B. EPA's Proposed Decision on Petitions

1. *January 19, 2001, petition; EPA proposes to grant this petition.* EPA agrees with DLA's reasoning 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 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 § 761.20(b) to § 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 § 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 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 disposal (§ 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, 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 floodgate 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 would 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. EPA agrees with DLA 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, 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 proposes to grant this petition.

2. *April 16, 2001, petition; EPA proposes to grant 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.B.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.B.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, 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 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, 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 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 proposes to grant this petition.

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VI. Regulatory Assessment Requirements

A. Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), 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. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, 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; and
3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. EPA is proposing to grant two petitions by DLA to import PCBs for disposal. Only DLA, which is not a small entity, would be regulated by this proposed rule.

C. 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 are listed in 40 CFR part 9 and 48 CFR chapter 15.

This proposed rule would not impose any new information collection burden. Once the exemption is granted as proposed, DLA will be subject to the existing EPA regulations regarding the 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, 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.

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 proposal 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. EPA is proposing to grant two petitions by DLA to import PCBs for

disposal. If the petitions are granted, and DLA imports PCBs for disposal, DLA would be required to comply with the existing regulations on PCB disposal at 40 CFR part 761. The only mandate that would be imposed by this proposed rule would be imposed on DLA. In addition, EPA has determined that this proposed rule would not significantly or uniquely affect small governments. The DLA petitions state that the PCBs will be disposed of in PCB-approved facilities. 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 facilities in the amounts specified in this proposal would have little, if any, impact on small governments. Thus, this proposed 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" is 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 proposed 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 proposing to grant 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 proposed rule. However, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, 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 proposed rule does not have tribal implications, as specified in Executive Order 13175. EPA's proposal would grant two petitions from DLA to import PCBs and dispose of them in PCB-approved disposal facilities 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 proposed rule. However, in the spirit of Executive Order 13175, EPA specifically solicits comment on this proposed rule from tribal officials.

G. Children's Health

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any proposed rule that:

1. Is determined to be "economically significant" as defined under E.O. 12866, and

2. Concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive order because it is not economically significant as defined in E.O. 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 proposing to grant two petitions from DLA to import PCBs and dispose of them in PCB-approved disposal facilities 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 proposed 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 proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. 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 proposed 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.

K. Civil Justice Reform

In issuing this proposed 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).

Lists of Subjects in 40 CFR Part 761

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

Dated: September 12, 2002.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I is proposed to 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, 2611, 2614, and 2616.

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

§ 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.

(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 amended, for disposal.

* * * * *

[FR Doc. 02–23718 Filed 9–13–02; 2:56 pm]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[Docket No. OST–2002–13361]

RIN 2105–AD17

Standard Time Zone Boundary in the State of North Dakota: Proposed Relocation of Sioux County

AGENCY: The Department of Transportation (DOT), Office of the Secretary (OST).

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Chairman of the Board of County Commissioners for Sioux County, ND, DOT proposes to relocate the boundary between mountain time and central time in the State of North Dakota. DOT proposes to move all of the county east of State Highway 31 into the central time zone.

DATES: Comments should be received by October 17, 2002, to be assured of consideration. Comments received after that date will be considered to the extent practicable. If the time zone boundary is changed as a result of this rulemaking, the effective date would be no earlier than 2 a.m. MDT Sunday, October 27, 2002, which is the changeover from daylight saving to standard time.

ADDRESSES: You may submit your comments and related material by only one of the following methods:

(1) By mail to the Docket Management Facility (OST–2002–13361), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

For questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 Seventh Street, Washington, DC 20590, (202) 366–9315, or by e-mail at *joanne.petrie@ost.dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is "regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce."

Time zone boundaries are set by regulation (49 CFR part 71). Currently, under regulation, the southeastern part of the county around Fort Yates is in the central time zone and the remainder of the county is in the mountain time zone. The area near Fort Yates has the greatest population, is the county seat, and has the greatest concentration of schools, businesses, medical facilities, houses of worship and recreational facilities. Areas to the south and east of the county observe central time. Morton County, which is north of Sioux County, is currently split between central and mountain time. Morton County has asked to be changed to central time and that request is currently pending before the Department. Grant County, which lies to the northwest and Adams County, which lies to the west, both observe mountain time.

The Standing Rock Indian Reservation is geographically located in both North and South Dakota and covers approximately 2.3 million acres. All of Sioux County is part of the reservation. The Standing Rock Sioux observe central time. Under the Uniform Time Act, as amended, the county is currently divided between central and mountain time for federal, state and county purposes.

Request for a Change

In 2000, the Chairman of the Board of County Commissioners for Sioux County asked the Department of Transportation to place the entire county on central time. A DOT representative informed the Standing Rock Sioux of this request by telephone and sent a letter to the Chairman of the Tribal Council. . On September 27, 2000, a representative of DOT visited the county and met with a representative of the Standing Rock Sioux Tribal Council to ascertain the Council's views on this request. The Tribal Representative explained that the tribe observed central time, had no plans to change that observance, and had no objection to the request of the Sioux County Board of County Commissioners.

On September 27, 2000, the DOT representative also held an informal public hearing at the Sioux County Courthouse to gather public views on this request. The hearing was widely advertised through numerous newspaper and television stations. In addition, the public was invited to submit written comments to the Department on this possible change.