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**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives an adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: April 6, 2007.

**Walter W. Kovalick,**

*Acting Regional Administrator, Region 5.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 761

[EPA-HQ-OPPT-2005-0042; FRL-8120-6]

RIN 2070-AB20

### Polychlorinated Biphenyls; Manufacturing (Import) Exemption

**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, processing, and distribution in commerce of polychlorinated biphenyls (PCBs). For purposes of TSCA, "manufacture" is defined to include import into the Customs Territory of the United States. 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. On July 21, 2005, the U.S. Defense Logistics Agency (DLA), a component of the Department of Defense (DOD), submitted a petition to EPA to import foreign-manufactured PCBs that DOD currently owns in Japan for disposal in the United States. In this document, EPA is proposing to grant DLA's petition and is soliciting public comment on this decision; if finalized, this decision to grant the petition would allow DLA to manufacture (i.e., import) certain PCBs for disposal.

**DATES:** Comments must be received on or before May 30, 2007.

If a hearing is requested on or before May 24, 2007, an informal hearing will be held in Washington, DC on a date to be announced in a future **Federal Register**.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number HQ-EPA-OPPT-2005-0042, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number HQ-EPA-OPPT-2005-0042. 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. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to docket ID number EPA-HQ-OPPT-2005-0042. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly

to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the docket index available in [www.regulations.gov](http://www.regulations.gov). To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [www.regulations.gov](http://www.regulations.gov) web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**FOR FURTHER INFORMATION CONTACT:** For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention

and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

*For technical information contact:*

Tom Simons, 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) 566-0517; e-mail address: [simons.tom@epa.gov](mailto:simons.tom@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

This action primarily 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:

- Waste Treatment and Disposal (NAICS code 5622), e.g., Facilities that store or dispose of PCB waste.
- Materials Recovery Facilities (NAICS code 56292), e.g., Facilities that process and/or recycle metals.
- Public Administration (NAICS code 92), e.g., the Petitioning Agency (i.e., the Defense Logistics Agency).

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

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

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](http://regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, 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 claimed as CBI. In addition to one complete version of the comments that includes 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

**II. Background**

*A. What Action is the Agency Proposing to Take?*

In this notice of proposed rulemaking, the Agency is proposing to grant a petition submitted by DLA to import PCB waste for disposal. In the absence of an exemption, import of this waste would be banned by section 6(e)(3) of TSCA. The petition, dated July 21, 2005, is for an exemption to import certain foreign-generated PCBs owned by DOD that are currently in use or storage in Japan. (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.)

On April 16, 2001, DLA submitted a similar petition to import over four million pounds of foreign-generated PCB waste. EPA granted that petition in a final rule document published in the **Federal Register** of January 31, 2003 (Ref. 1).

*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 (which includes import) 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 section 6(c)(2), (3), and (4), which provide for a proposed rule, the opportunity for an informal public hearing, and a final rule.

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, which describes the required content for manufacturing exemption petitions and the procedures EPA follows in rulemaking on these petitions. These rules are codified at 40 CFR 750.10 through 750.21.

**III. Findings Necessary to Grant Petitions**

*A. No 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. EPA has interpreted this provision to require a petitioner to demonstrate that the activity will not pose an unreasonable risk. (See 40 CFR 750.11.)

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 1988 PCB proposed rule document published in the **Federal Register** of August 24, 1988 (Ref. 2).

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.

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. 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 this 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 has interpreted this provision to require that a petitioner has the burden of demonstrating that it has made the requisite good faith efforts. (40 CFR 750.11) 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. In each case, the burden is on the petitioner to show specifically what they did to substitute non-PCB material for PCBs or to show why it was not feasible to substitute non-PCBs for PCBs.

To satisfy this finding for requests for an exemption to import PCBs for disposal, a petitioner must show why such activity must occur in the United States, and what steps will be taken to eliminate the need to import PCBs in the future. While requiring a petitioner to demonstrate that good faith efforts to develop a substitute for PCBs makes sense when dealing with traditional manufacture 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 Department of Defense overseas. EPA believes the more relevant "good faith" issue for such an exemption request is whether the disposal of the waste could and/or should occur outside the United States.

## IV. Proposed Disposition of Pending Exemption Petition

### A. The Petition: July 21, 2005 Petition to Import PCBs Located in Japan

On July 21, 2005, DLA submitted a petition seeking a 1-year exemption to import PCBs and PCB Items currently in temporary storage at U.S. military installations in Japan. In revised figures provided in November 2006 (Ref. 4), DLA estimates that as much as 1,328,482 pounds of waste contaminated with PCBs could be generated in Japan through the calendar year 2008. Exactly how much of this waste would be imported under this exemption would depend on the date when the final exemption would be in effect, as the exemption is limited to a 1-year maximum. The final exemption would be limited to the specific portion (amount and type) of such waste as provided by DLA prior to publication of the final rule. The material in Japan consists of liquids, electrical transformers, capacitors, switches, circuit breakers, other miscellaneous items and debris (rags, gaskets, and personal protective equipment). PCB concentrations of the waste include amounts in all regulatory concentrations (i.e., <50 parts per million (ppm), 50–499 ppm, and >500 ppm); however, 88% of the waste is at concentrations below 50 ppm PCB and less than 5% of the total shipment is liquid PCBs greater than 50 ppm. Details of the particular amounts and concentrations DLA petitioned to import are provided in Refs. 3 and 4.

DLA proposes to package and transport, treat and dispose of this PCB waste in the same manner as waste identified in its previous petitions (Ref. 1), which EPA granted in 2003 to allow the import of over 4,000,000 pounds of waste contaminated with PCBs; DLA notes that compliance is required with the International Maritime Dangerous Goods Code/International Maritime Organization, the International Civil Aviation Organization Technical Instructions, the International Air Transport Association Dangerous Goods Code, the United Nations Recommendations on the Transport of Dangerous Goods Code, and 49 CFR parts 100–199. DLA further notes that proper handling and shipping will include blocking, bracing, over packing, and inclusion of spill containment devices, as required by applicable transportation regulations.

DLA states that it will 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 U.S.” and that it will only “award contracts for treatment and disposal services with commercial firms. Contracts will be awarded in accordance with all applicable federal procurement statutes and the Federal Acquisition Regulations (FAR).” On October 12, 2005, DLA selected Clean Harbors Environmental Services (CHES) in Coffeyville, Kansas to dispose of the PCB waste to be removed from Japan. CHES has disposed of PCBs returning from Japan at the Coffeyville facility on four separate occasions since 2003 without incident. In addition, DLA will use shippers approved by the U.S. Department of Transportation when the waste materials are transported from the California port to the Coffeyville disposal facility. The surface commercial transport trucks and the sea vessels themselves are approved and contracted for use by the DOD Surface Deployment and Distribution Command.

1. *Information regarding no unreasonable risk provided by the petitioner.* 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 that it 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 U.S. for disposal,” and that “prior to safely returning and disposing of 2.7 million pounds of foreign-generated PCB containing waste under the previously granted exemption, DLA returned 2.4 million pounds of U.S.-manufactured PCBs and PCB Items from Japan since 1991 for compliant disposal without incident.”

In contrast, DLA notes that the continued storage of PCBs at U.S. facilities in Japan is problematic. 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 in Japan, much of DLA’s foreign-manufactured PCB waste inventory in Japan has been in storage for years 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 accumulation over extended time periods increases the risk of exposure to U.S. military personnel, to people living in and around the U.S. installations where the PCBs are stored, and to the environment should releases occur due to human error, or unforeseen severe weather, or seismic events. In addition, storage containers will deteriorate with time, increasing the likelihood that personnel who must monitor such items and repack them if they suspect leakage are exposed to the PCBs. Long-term storage may increase the DOD’s liability for cleanup costs if spills occur. This would increase exposure to U.S. personnel and local citizens and could potentially result in ground and water contamination. Each time an item is handled, another opportunity for a spill or exposure is created. The storage situation is exacerbated 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. Moreover, the situation for the DOD is further complicated because of the perceptions of the local communities regarding PCBs.

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

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. (61 FR 11096)

The same rule also underscored the benefit of prompt disposal in the United States (Ref. 5):

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. (61 FR 11096)

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

In 1968, a tragic human poisoning episode in Western Japan affected over 1,000 people causing 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 prohibitions such as those imposed by TSCA, the Stockholm Convention, and Japanese domestic law. As a result of this highly publicized incident, Japanese citizens exhibit particular sensitivity to PCB issues. Delicate U.S.-Japan relations over the presence and operation of U.S. military installations could

be adversely affected by denial of this petition.

The presence of PCBs on U.S. military bases in Japan has in the past attracted significant adverse attention from Japanese politicians, the Japanese press, Japanese environmental groups, and local citizens. There has been constant local surveillance of U.S. military PCB storage in Sagami-hara and demands for inspections and sampling for PCBs since at least 1992, when a member of Congress released a report outlining the storage and presence of PCBs and other hazardous materials on U.S. bases in Japan. Any perception that the United States would return to stockpiling and long term storage of these materials invites unwarranted claims that the U.S. military is neglecting its environmental responsibilities.

DLA concludes:

Allowing PCB material to remain in storage indefinitely may lead to degradation of storage containers and releases of PCBs into the environment from the materials located at temporary or permanent storage facilities. PCBs released into the environment as a result of disasters, accidents, container degradation or other events can present significant exposure risks. This material is currently stored, or will need to be stored, on crowded DOD facilities in close proximity to where U.S. military and civilian personnel and the local community live and work. Since there are no permitted PCB disposal facilities available to U.S. forces in Japan, and because of the unique environmental conditions in Japan, as noted above, the potential for PCB contamination via leaks from aging containers or accidental spills is higher at these locations than at EPA-permitted disposal facilities in the DOD civilian employees, U.S. military personnel, and contractors employed by the U.S. Government are at greatest risk.

2. *Information regarding good faith efforts provided by the petitioner.* DLA argues in its petition that disposal of its PCBs in Japan is not an available disposal option:

As DLA noted in its previous exemption requests, there are significant impediments to disposal on DOD military installations in Japan. To be properly processed, PCB materials should be separated into three streams: (1) metallic components to be decontaminated and recycled; (2) used oils to be treated/dechlorinated and recycled or burned for energy recovery; and (3) non-recyclable material to be treated and disposed of as residual solid wastes. Although certain portable treatment technologies are becoming available in Japan, the domestic regulatory standards are very stringent and would require PCB decontamination levels to be less than 0.5 ppm without dilution to qualify an item as being non PCB. Complicating the situation further is that any transfer or sale of property from the U.S. military installations into Japanese commerce is considered an “import” of property. Japan has banned the importation of PCBs at any detectable concentration including concentrations below the very stringent 0.5 ppm level at

which Japan regulates domestic PCBs. DLA is not aware of any available technologies that are permitted in Japan that would treat all PCBs items to the level that PCBs are completely removed or that could be acquired at a cost that is economically feasible. Moreover, if such technology were to become available, it would not resolve the issue of the residual "non-recyclable" waste that would remain or result from the treatment process. There are no permitted commercial disposal facilities currently available to the U.S. military for PCB disposal in Japan; hence, treatment outside of Japan would still be required for the residual wastes resulting from any "on-installation" treatment process.

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. In particular, DLA discusses the difficulty of shipping waste from Japan to other countries posed by the Basel Convention:

Prior to submitting its previous request to EPA for an exemption from the TSCA PCB import ban, DLA and its primary disposal contractor made contacts over a period of several years with Japanese officials and with disposal facilities located outside the U.S. in an effort to identify firms that could dispose of waste PCB items overseas while satisfying Basel Convention requirements. The DOD also consulted with State Department officials in Japan and the U. S. whose responsibilities included international environmental matters. These consultations resulted in a consensus that use of existing facilities in other developed countries was not a reasonable alternative. Even if other countries would accept these wastes, non-governmental organizations could be expected to oppose disposal of its U.S. waste in third countries, principally because the U. S. already has the technical capability to dispose of PCBs.

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 the Petition: July 21, 2005 Petition; EPA Proposes to Grant this Petition*

1. *No unreasonable risk determination.* 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. In addition, the risks to human health and the environment associated with long-term storage of this waste far outweigh the risks associated with the transportation

of this waste from Japan to an approved disposal facility in the United States.

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. EPA permits the domestic processing and distribution in commerce of PCBs and PCB Items for disposal in compliance with 40 CFR 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). For the following reasons, EPA finds that there is no unreasonable risk from the transport of this waste to the United States for disposal:

- i. PCBs are hazardous and pose a potential risk to health and the environment. Proper disposal would reduce PCB-associated risks.
- ii. Risk results from a combination of exposure (likelihood, magnitude and duration) and the probability of effects occurring under the conditions of exposure. Because the probability of a transport accident occurring is low, the likelihood of exposure to PCBs is commensurately low. Consequently, the risk of adverse effects to human health or the environment is minimal.
- iii. The PCB-containing materials would be packaged in a manner consistent with federal, state, and local regulations addressing the storage and transport of hazardous materials. In addition, PCB waste would be continuously monitored during the water transport from Japan to the U.S. Contingency plans are required by the International Maritime Dangerous Goods Code and the Department of Transportation to be in place before and after the import of PCB-containing items to the United States. Moreover, the PCB items that would be transported to the United States are not combustible, which would make the probability of fires low. Together, these contingency measures would minimize exposure to humans and the environment in the event of an accident or emergency during ocean transport.

iv. Given the aforementioned information, the exposure likelihood, frequency, and duration are so low that even though PCBs are considered to be highly hazardous, risk (combined exposure and hazard) would not be unreasonable to human health or the environment.

v. The potential for human health risks are further mitigated by duration of exposure. PCBs are most hazardous following long-term (chronic)

exposures. Under the transport scenario proposed, any exposures to humans (i.e., accidental or emergency situation) would be of very short duration. Hence, the low probability of exposure occurring combined with the short-term duration of exposure, should one occur, further supports a qualitative conclusion that there is no unreasonable risk to human health.

vi. The long-term concern is the potential for accumulation in the ecological environment. Under a worst case scenario where all of the PCBs were released due to an unforeseen and highly unlikely catastrophic event during transport, PCB-exposed biological receptors could be adversely affected. However, this scenario is highly unlikely because it would require a complete failure of all safeguards that would be in place. The DLA analyses indicate that there would be a low probability of a complete failure. The alternative of storing the PCBs indefinitely seems to pose more risk than transport. Further, should an accident occur, emergency response authorities at least within U.S. waters, would be invoked to mitigate and/or remediate exposures.

2. *Good faith efforts to find substitutes met.* Section 6(e)(3)(B)(ii) of TSCA requires the Administrator to make an additional finding, that "good faith efforts have been made to develop a chemical substance that does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl." EPA has interpreted this provision to require that a petitioner has the burden of demonstration that it has made the requisite good faith efforts. (See 40 CFR 750.11.)

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. DLA has explored exporting this waste to other countries as an alternative but since this is waste owned by the United States, the waste may not be shipped to other countries in the area because the United States is not a party to the Basel Convention and does not have bilateral agreements with countries in the area. EPA also acknowledges the peculiar circumstances of DOD's PCBs, which, while present in one country, are owned by another country'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 alternative for this waste.

3. *Benefits of granting the petition—i. Avoiding the risks of long-term storage.* EPA believes that granting the petition to import 1,328,482 pounds of waste contaminated with PCBs (88% is less than 50 ppm and less than 5% is liquid PCBs greater than 50 ppm) will benefit the United States and the environment in general 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 eliminated through the action proposed in the petition.

ii. *Ensuring proper and safe disposal.* Granting the petition would allow the U.S. to accept responsibility for the toxic waste it generates by assuring proper and safe disposal in domestic permitted disposal facilities.

iii. *Ensuring the safety of Japanese citizens.* EPA considers the reduction of risk to Japanese citizens to be 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. Granting the petition is the only practical mechanism to remove this waste from Japan. Otherwise the U.S. military is in the awkward position of explaining to its Japanese hosts that it cannot remove its own toxic waste from their country because U.S. law does not allow the waste to be sent to the United States.

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

## V. References

1. EPA, OPPT. Polychlorinated Biphenyls; Manufacturing (Import) Exemptions. Final Rule. OPPT-2002-0013. **Federal Register** (68 FR 4934, January 31, 2003) (FRL-7288-6). Available at <http://www.epa.gov/fedrgstr>.

2. EPA, Office of Toxic Substances (OTS). Polychlorinated Biphenyls; Manufacturing, Processing, Distribution in Commerce Exemptions. Proposed Rule. OPTS-66008F. **Federal Register** (53 FR 32326, August 24, 1988).

3. DOD, DLA. Petition from Keith W. Lippert, Vice Admiral, SC, USN, Director to Stephen L. Johnson, Administrator, EPA. Subject: Petition to the Administrator, United States Environmental Protection Agency, For an Exemption Under the Toxic Substances Control Act to Import Polychlorinated Biphenyls (PCB) and

PCB Items for Disposal. July 21, 2005. 13 pp. with attachments.

4. DOD, DLA. Electronic mail dated November 2, 2006 from Miriam Alonso, Hazardous Programs, to Tom Simons, National Program Chemicals Division, OPPT, EPA. Subject: Updated Petition Data for EPA for petition submitted July 21, 2005. 2 pp.

5. EPA, OPPTS. Disposal of Polychlorinated Biphenyls; Import for Disposal. Final Rule. **Federal Register** (61 FR 11096, March 18, 1996) (FRL-5354-8). Available at <http://www.epa.gov/fedrgstr>.

## VI. Statutory and Executive Order Reviews

### A. Executive Order 12866: 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. 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. EPA is proposing to grant the petition by DLA to import PCBs for disposal. DLA would then 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 provisions of PRA, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control numbers 2070-0003 (EPA ICR No. 1000.06), 2070-0008 (EPA ICR No. 1001.06), 2070-0011 (EPA ICR No. 1012.06), 2070-0021 (EPA ICR No. 0857.07), 2070-0112 (EPA ICR No. 1446.06), and 2070-0159 (EPA ICR No. 1729.02). Copies of these ICR documents may be obtained by mail at the Office of Environmental Information, Collection Strategies Division (2822), 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) 566-1672. Copies may also be downloaded from the Internet at <http://www.epa.gov/icr>. Include the ICR and/or OMB numbers in any correspondence.

As defined by 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. This 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.

### C. 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.
3. A small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the impacts of this proposed rule on small entities, EPA certifies 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 this petition by DLA to import PCBs for disposal. Only DLA, which is not a small entity, would be regulated by this proposed 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 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 one year. EPA is proposing to grant a petition by DLA to import PCBs for disposal. If the petition is 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 proposal would be imposed on DLA. In addition, EPA has determined that this proposal would not significantly or uniquely affect small governments. The DLA petition states 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, or 205.

#### E. *Executive Order 13132: Federalism*

This action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999).

#### F. *Executive Order 13175: 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 a petition 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. *Executive Order 13045: 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 rule that:

1. Is determined to be “economically significant” as defined under Executive Order 12866.

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 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 proposing to grant the petition from DLA to import PCBs and dispose of them in approved PCB 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. *Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

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*

This action does not involve any technical standards; therefore, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (15

U.S.C. 272 note), does not apply to this action.

#### J. *Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

This action does not entail special considerations of environmental justice related issues as delineated 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. *Executive Order 12630: Governmental Actions and Interference with 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.

#### L. *Executive Order 12988: 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, Reporting and recordkeeping requirements.

Dated: April 19, 2007.

**James B. Gulliford,**  
Assistant Administrator, Office of Prevention,  
Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

#### **PART 761—[AMENDED]**

1. The authority citation for part 761 would continue 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 United States Defense Logistics Agency's July 21, 2005 petition for an exemption for 1 year to import 1,328,482 pounds of PCBs and PCB items stored or in use in Japan as identified in its petition, as amended, for disposal.

\* \* \* \* \*

[FR Doc. E7-8182 Filed 4-27-07; 8:45 am]

BILLING CODE 6560-50-S

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[I.D. 042307F]

**Gulf of Mexico Fishery Management Council; Scoping Hearings**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notification of scoping hearings.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene Public Hearings on Reef Fish Amendment 27/Shrimp Amendment 14.

**DATES:** The public hearings will held from May 14 - 24, 2007 at 13 locations throughout the Gulf of Mexico. For specific dates and times see

**SUPPLEMENTARY INFORMATION.****ADDRESSES:**

*Meeting addresses:* The public hearings will be held in the following locations: Brownsville, Port Aransas, Palacios, and Galveston, TX, New Orleans, Chauvin, and Abbeville, LA, Destin, Tampa, and Ft. Myers, FL, Foley and Mobile, AL and Biloxi, MS. For specific dates and times see

**SUPPLEMENTARY INFORMATION.**

*Council address:* Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, Florida 33607.

**FOR FURTHER INFORMATION CONTACT:** Dr. Richard Leard, Deputy Executive Director; telephone: 813-348-1630.

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico Fishery Management Council (Council) has scheduled a series of public hearings to receive comments on Draft Amendment 27 to the Reef Fish Fishery Management Plan and Amendment 14 to the Shrimp Fishery Management Plan. This amendment contains potential management

measures to modify the rebuilding plan for red snapper in order to end overfishing and recover this overfished stock. These measures would further reduce the directed red snapper harvest as well as bycatch from both the directed fishery and the shrimp fishery.

The public hearings will begin at 6 pm and conclude at the end of public testimony or no later than 10 pm at each of the following locations:

*Monday, May 14, 2007,* Holiday Inn Brownsville, 3777 N. Expressway, Brownsville, TX 78520, 956-547-1500;

*Tuesday, May 15, 2007,* Four Points Sheraton New Orleans Airport, 6401 Veterans Memorial Blvd., Metairie, LA 70003, 504-885-5700;

*Tuesday, May 15, 2007,* Plantation Suites, 1909 Hwy 361, Port Aransas, TX 78373, 361-749-3866;

*Wednesday, May 16, 2007,* Chauvin Parish Recreation Center, 215 Angel St., Chauvin, LA 70345, 985-594-2020;

*Wednesday, May 16, 2007,* Palacios Rec Center, 2401 Perryman Ave, Palacios, TX 77465, 361-972-2387;

*Thursday, May 17, 2007,* LSU Agricultural Center, 1105 W. Port St., Abbeville, LA 70510, 337-898-4335;

*Thursday, May 17, 2007,* San Luis Resort, 5222 Seawall Boulevard, Galveston, Texas 77550, 409-744-1500;

*Monday, May 21, 2007,* Embassy Suites Hotel, 570 Scenic Gulf Drive, Destin, FL 32550, 850-337-7000;

*Monday, May 21, 2007,* Clarion Hotel, 12635 S. Cleveland Ave., Ft. Myers, FL 33907, 239-936-0931;

*Tuesday, May 22, 2007,* Quorum Hotel, 700 N. Westshore Blvd., Tampa, FL 33609, 813-289-8200;

*Tuesday, May 22, 2007,* Foley Community Center, 407 E. Laurel Ave., Foley, AL 36535, 251-943-1545;

*Wednesday, May 23, 2007,* Riverview Plaza Hotel, 64 S. Water St., Mobile, AL 36602, 251-438-4000;

*Thursday, May 24, 2007,* Donal Snyder Parks & Rec Center, 2520 Pass Road, Biloxi, MS 39531, 228-435-6281.

Copies of the Amendment can be obtained by calling the Council office at 813-348-1630. These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least five working days prior to the meeting.

Dated: April 24, 2007.

**James P. Burgess,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E7-8189 Filed 4-27-07; 8:45 am]

BILLING CODE 3510-22-S

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[I.D. 042307E]

**Mid-Atlantic Fishery Management Council; Public Hearings**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public hearings.

**SUMMARY:** The Mid-Atlantic Fishery Management Council (MAFMC) will hold hearings to allow for public input on Amendment 9 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fishery (FMP).

**DATES:** Written comments will be accepted until May 27, 2007. All meetings begin at 7 a.m. For specific dates and locations of the hearings see **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** Comments may be submitted through any of the following methods:

- Mail: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, Delaware 19904.
- FAX: 302-674-5399.
- E-mail: [info@mafmc.org](mailto:info@mafmc.org). Please indicate the subject as SMB 9 Comments.
- Federal e-Rulemaking Portal: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, Delaware 19904, 302-674-2331, ext. 19.

**SUPPLEMENTARY INFORMATION:****Background**

The purpose of the hearings is to receive public input on management actions under consideration in Amendment 9 to the Atlantic Mackerel, Squid, and Butterfish FMP. The proposed management actions could:

- (1) Allow multi-year specifications for all four species managed through the FMP,
- (2) Extend or eliminate the moratorium on entry into the directed *Illex* squid fishery,
- (3) Revise the current overfishing definition for *Loligo* squid,
- (4) Designate EFH for *Loligo* eggs,