Appendix B—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing ''Grand Street Mercury, Hoboken, NJ.''

[FR Doc. E7–18363 Filed 9–17–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[EPA–HQ–OPPT–2005–0042; FRL–8143–4]

RIN 2070–AB20

Polychlorinated Biphenyls; Manufacturing (Import) Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final 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 United States Defense Logistics Agency (DLA), a component of the United States 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 granting DLA's petition. This decision to grant the petition allows DLA to manufacture (i.e., import) certain PCBs for disposal.

DATES: This final rule is effective January 7, 2008.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2005–0042. All documents in the docket are listed in the docket index available in 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 regulations.gov website 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*.

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*.

SUPPLEMENTARY INFORMATION:

I. 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 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 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**.

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of April 30, 2007 (Ref. 1), the Agency proposed to grant DLA's petition to import PCB waste for disposal. The Agency received no comments on that proposal. In this final rule, the Agency is granting 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. 2).

B. What is the Agency's 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. 3).

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 DOD 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. Final Disposition of This 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. 5), 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. 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. 4 and 5.

DLA will package and transport, treat and dispose of this PCB waste in the same manner as waste identified in its previous petitions (Ref. 2), 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 Disposal Facility on four separate occasions since 2003 without incident. In addition, DLA will use shippers approved by the United States Department of Transportation (DOT) 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 will be managed in accordance with all applicable laws and regulations. Once in the United States, the PCB waste will be transported, handled, treated, and disposed of in compliance with the PCB regulations at 40 CFR part 761. DLA states that it will 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. 6):

> 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. 6):

> 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 Sagamihara 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 Final Decision on the Petition: July 21, 2005 Petition; EPA is Granting 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. 6). 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 will be packaged in a manner consistent with Federal, State, and local regulations addressing the storage and transport of hazardous materials. In addition, PCB waste will be continuously monitored during the water transport from Japan to the United States. Contingency plans are required by the International Maritime Dangerous Goods Code and DOT to be in place before and after the import of PCB-containing items to the United States. Moreover, the PCB items that will be transported to the United States are not combustible, which will make the probability of fires low. Together, these contingency measures will 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) will 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) will 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 will 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 Convention 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 finalized in the petition.

ii. *Ensuring proper and safe disposal*. Granting the petition allows the United States 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 is granting the petition.

V. References

1. EPA, OPPT. Polychlorinated Biphenyls; Manufacturing (Import) Exemption. Proposed Rule. **Federal Register** (72 FR 21190, April 30, 2007) (FRL–8120–6). Available on-line at *http://www.epa.gov/fedrgstr*.

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

3. 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).

4. DOD, DLA. Petition from Keith W. Lippert, Vice Admiral, SC, USN, Director to Stephen L. Johnson, Administrator, EPA. Subject: Petition to the Administrator, United Sates 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.

5. 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.

6. EPA, OPPT. Disposal of Polychlorinated Biphenyls; Import for Disposal. Final Rule. **Federal Register** (61 FR 11096, March 18, 1996) (FRL–5354–8). Available on-line 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 final rule would not impose any new information collection burden. EPA is proposing to grant the petition by DLA to import PCBs for disposal. DLA is now 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* 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 final 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 final rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. EPA is granting this petition by DLA to import PCBs for disposal. Only DLA, which is not a small entity, is regulated by this final 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 final rule 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 granting a petition by DLA to import PCBs for disposal. DLA is required to comply with the existing regulations on PCB disposal at 40 CFR part 761. The only mandate that is imposed by this final rule is imposed on DLA. In addition, EPA has determined that this final rule 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 final rule would have little, if any, impact on small governments. Thus, this final 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 final rule does not have tribal implications, as specified in Executive Order 13175. EPA's final rule grants 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 final rule.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

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 final 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 granting 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 Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Lists of Subjects in 40 CFR Part 761

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

Dated: September 10, 2007.

James B. Gulliford,

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

■ Therefore, 40 CFR chapter I is amended as follows:

PART 761—[AMENDED]

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

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

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

§ 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. E7–18345 Filed 9–17–07; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[USCG–2006–24414]

RIN 1625–AB05

Rates for Pilotage on the Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is finalizing the February 2007 interim rule, which updated rates for pilotage service on the Great Lakes by increasing rates an average of 22.62% across all three pilotage districts over the last ratemaking that was completed in April 2006. Annual reviews of pilotage rates are required by law to ensure that sufficient revenues are generated to cover the annual projected allowable expenses, target pilot compensation, and returns on investment of the pilot associations.

DATES: This final rule is effective October 18, 2007.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2006–24414 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, 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 FURTHER INFORMATION CONTACT: For questions on this final rule, please call Mr. Michael Sakaio, Program Analyst, Office of Great Lakes Pilotage, Commandant (CG–3PWM), U.S. Coast Guard, at 202–372–1538, by fax 202–372–1929, or by email at *michael.sakaio@uscg.mil.* For questions on viewing or submitting material to the docket, call Renee V. Wright, Chief, Dockets, Department of Transportation, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The Great Lakes Pilotage Act of 1960, codified in Title 46, Chapter 93, of the United States Code (U.S.C.), requires foreign-flag vessels and U.S.-flag vessels in foreign trade to use Federal Great Lakes registered pilots while transiting the St. Lawrence Seaway and the Great Lakes system. 46 U.S.C. 9302, 9308. The Coast Guard is responsible for administering this pilotage program, which includes setting rates for pilotage service. 46 U.S.C. 9303.

The Coast Guard pilotage regulations require annual reviews of pilotage rates and the creation of a new rate at least once every five years, or sooner, if annual reviews show a need. 46 CFR part 404. 46 U.S.C. 9303(f) requires these reviews and, where deemed appropriate, that adjustments be established by March 1 of every shipping season.

To assist in calculating pilotage rates, the three Great Lakes pilotage associations are required to submit to the Coast Guard annual financial statements prepared by certified public accounting firms. In addition, every fifth year, in connection with the full ratemaking, the Coast Guard contracts with an independent accounting firm to conduct audits of the accounts and records of the pilotage associations and to submit financial reports relevant to the ratemaking process. In those years when a full ratemaking is conducted, the Coast Guard generates the pilotage rates using Appendix A to 46 CFR Part 404. Between the five-year full ratemaking intervals, the Coast Guard annually reviews the pilotage rates using Appendix C to 46 CFR Part 404, and adjusts rates as appropriate.

The last full ratemaking was published in the **Federal Register** on April 3, 2006 (71 FR 16501). The first annual review following the 2006 ratemaking showed a need to adjust rates for the 2007 Great Lakes shipping season. That adjustment was the subject of a Notice of Proposed Rulemaking (''NPRM,'' 71 FR 39629, Jul. 13, 2006), followed by an Interim Rule (72 FR 8115, Feb. 23, 2007; corrected at 72 FR 13352, Mar. 21, 2007) which took effect March 26, 2007. In addition to the public comments, we received on the NPRM, we invited comments on the interim rule.

II. Discussion of Comments

The Coast Guard received three comments in response to the interim rule. One comment was received from the legal representative of the pilot associations; one comment was received from the legal representative for the Shipping Federation of Canada; and one comment was received from the Saint Lawrence Seaway Pilots Association.