



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 761

[EPA-HQ-RCRA-2013-0396; FRL-9909-00-OSWER]

RIN 2050-AG79

### Polychlorinated Biphenyls (PCBs): Manufacturing (Import) Exemption for the Defense Logistics Agency (DLA)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

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**SUMMARY:** The U.S. Environmental Protection Agency (EPA or the Agency) is proposing to take action on a petition from the United States Defense Logistics Agency (DLA) to import foreign-manufactured polychlorinated biphenyls (PCBs). For purposes of the Toxic Substances Control Act (TSCA), “manufacture” is defined to include the import of chemical substances into the customs territory of the United States. With certain exceptions, section 6(e)(3) of TSCA bans the manufacture, processing, and distribution in commerce of PCBs. One of these exceptions is TSCA section 6(e)(3)(B), which gives EPA authority to grant petitions to import PCBs into the customs territory of the United States for a period of up to 12 months, provided EPA can make certain findings by rule. On April 23, 2013, EPA received a petition from DLA, a component of the United States Department of Defense (DOD), to import foreign-manufactured PCBs that DOD currently owns in Japan for disposal in the United States. EPA is proposing to grant DLA’s petition as of July 1, 2014. This proposal to grant the petition, if finalized, would allow DLA to manufacture (i.e., import) certain PCBs for disposal. EPA has granted two previous

exemptions in 2003 and 2007 to DLA for similar petitions to import PCBs for disposal. Without an exemption granted by EPA, DLA would not be allowed to import the PCB waste to the U.S. for proper disposal. In fact, if the exemption is not granted, it is very likely that DLA will not be able to find any country willing to accept and properly dispose of the PCB waste.

**DATES:** Written comments or a request for an informal hearing (per 40 CFR part 750, subpart B) must be received by **[Insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-RCRA-2013-0396, by mail to **RCRA Docket**, Mail Code 28221T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Attention Docket ID No. EPA-HQ-RCRA-2013-0396. Please include a total of two copies. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the Rules section of this Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Kelly Greene, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, (MC: 5304P), 1200 Pennsylvania Avenue, NW, Washington, DC, 20460, Phone: 703-347-0363; or by e-mail: greene.kelly@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## **I. Why is EPA Proposing This Rule?**

EPA is proposing to grant DLA's petition to revise 40 CFR 761.80, which will allow DLA to import its PCB waste from Japan back to the customs territory of the United States for proper disposal. In addition, in the Rules section of this Federal Register, EPA is promulgating a direct final rule to make the same revision as is being proposed here, for the reasons outlined in detail in the preamble to that direct final rule. The reason EPA is issuing a direct final rule elsewhere in this Federal Register is because we view this revision as a noncontroversial action and anticipate no adverse comment. However, if we receive adverse comment or a request for an informal hearing, we will withdraw the direct final rule (and therefore it will not take effect based on the direct final rule), and address all public comments in any subsequent final rule based on this proposed rule. Alternatively, if we receive no adverse comment (or request for an informal hearing) on the change we are promulgating today in the direct final rule, we will not take further action on this proposed rule. We do not intend to institute a second comment period on this action, unless an informal hearing is requested, in which case comments will be accepted until one week after the close of the informal hearing. Any parties interested in commenting should do so at this time, since there may not be an informal hearing. For further information, please see the information provided in the **ADDRESSES** section of this document.

## **II. Does This Action Apply to Me?**

The discussion of the potentially affected entities by this proposed rule can be found in the preamble to the direct final rule located in the Rules section of this Federal Register.

### **III. Statutory and Executive Order Reviews**

For a complete discussion of all the administrative requirements applicable to this action, see the direct final rule in the Rules section of this [Federal Register](#).

The Regulatory Flexibility Act (RFA) 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 governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business that is primarily engaged in hazardous waste treatment and disposal as defined by NAICS code 562211, with annual receipts of less than 12.5 million dollars (based on Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule merely allows DOD to bring its PCB waste back to the U.S. for proper disposal.

**List of Subjects in 40 CFR Part 761**

Environmental protection, Hazardous substances, and Polychlorinated biphenyls.

Dated: March 25, 2014.

Mathy Stanislaus,

Assistant Administrator,

Office of Solid Waste and Emergency Response.

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