6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[EPA-HQ-RCRA-2013-0396; FRL-9908-98-OSWER]

RIN 2050-AG79

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA or the Agency) is taking direct final 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 granting DLA’s petition as of July 1, 2014. This decision to grant the petition allows 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: This direct final rule will be effective July 1, 2014 without further notice, unless EPA receives adverse written comment or a request for an informal hearing (per 40 CFR part 750, subpart B) by **[Insert date 30 days after publication in the Federal Register]**. If adverse comments or a request for an informal hearing are received, EPA will publish a timely withdrawal in the Federal Register informing the public that this rule will not take effect based on the direct final rule. EPA will then address all public comments in any subsequent final rule based on the proposed rule which accompanies this direct final rule.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-RCRA-2013-0396, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: *rcra-docket@epa.gov*. Attention Docket ID No. EPA-HQ-RCRA-2013-0396.
- Mail: **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 two copies.
- Hand Delivery: Please deliver two copies to the EPA Docket Center (EPA/DC), WJC West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. Such deliveries are

only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-RCRA-2013-0396. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at 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 or e-mail. The 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, your e-mail address will be automatically captured and included as part of the comment that is placed in the public 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/dockets/.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., 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 either electronically in www.regulations.gov or in hard copy at the RCRA Docket, EPA/DC, WJC West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the RCRA Docket is (202) 566-0270.

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

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I. Why Is EPA Using a Direct Final Rule?

EPA is publishing this rule as a direct final rule because the Agency views this action as noncontroversial and EPA anticipates no adverse comments since EPA has granted two previous exemptions to DLA for similar petitions to import PCB waste (68 FR 4934 and 72 FR 53152)(Ref. 2, 3). EPA received no adverse comments or requests for an informal hearing for either of the previous two DLA petitions, the last of which was granted on September 18, 2007. In the absence of an exemption, import of the waste identified by the petitioner would be banned from being imported into the customs territory of the United States by section 6(e)(3) of TSCA. The petition, dated April 23, 2013, is for an exemption to import for proper disposal certain PCBs under the control of DLA that are currently in use or storage in Japan (Ref. 1). Additionally, EPA believes that a direct final rule will expedite processing of an import exemption and the proper disposal of the PCB wastes, further reducing risks from long term storage overseas.

If EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect based on the direct final rule. Any parties interested in commenting must do so at this time. If an informal

hearing is requested, the Agency will publish the place and time of the hearing. Public comments will be accepted for one week after the close of the informal hearing. If we receive adverse comments, after withdrawing the direct final rule, we will address all public comments in any subsequent final rule based on the accompanying proposed rule.

If the Agency does not receive adverse comments or a request for an informal hearing, this direct final rule will take effect on July 1, 2014.

II. Does This Action Apply to Me?

This action applies to the petitioner, the U.S. Defense Logistics Agency. However, you may be potentially affected by this action if you process, distribute in commerce, or dispose of the PCB waste imported by DLA, 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 North American Industrial Classification System ((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., DLA).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially affected by this action. Other types of entities not listed in this section could also be affected. The 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 person listed under the **FOR FURTHER INFORMATION CONTACT** section of this document.

III. Background

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 April 1, 1979. Section 6(e)(1) of TSCA also authorizes EPA to regulate the disposal of PCBs consistent with the provisions in section 6(e)(2) and (3) of TSCA.

Section 6(e)(3)(B) of TSCA, however, stipulates that any person may petition the EPA 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 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 one year from the date the petition is granted. In addition, section 6(e)(4) of TSCA requires that a rule under section 6(e)(3)(B) of TSCA be promulgated in accordance with sections 6(c)(2), (3) and (4) of TSCA, which provide for

publication of a proposed rule, the opportunity for written comments and an informal hearing, if requested, and publication of a final rule.

EPA's procedures for rulemaking under section 6 of TSCA 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 that EPA follows in rulemaking regarding these petitions. These rules are codified at 40 CFR 750.10 through 750.21.

IV. Findings Necessary to Grant Petitions

A. No Unreasonable Risk Finding

Before granting an exemption petition, section 6(e)(3)(B)(i) of TSCA requires the Administrator to find that granting an exemption would not result in an unreasonable risk of injury to health or to the environment. EPA expects a petitioner to demonstrate in its petition 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 to 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 human health and environmental effects of PCBs is provided in the advance notice of proposed rulemaking for the reassessment of

PCB use authorizations in the Federal Register of April 7, 2010 (75 FR 17645) (Ref. 5). The Agency for Toxic Substances and Disease Registry (ATSDR) Toxicological Profile for PCBs (2000) has also provided a recent review of PCB human health and environmental effects (Ref. 6).

a. Health effects. EPA has determined that PCBs cause significant human health effects, including cancer (classified as a probable human carcinogen), 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.

b. Environmental effects. Certain PCB congeners are among the most stable chemicals known, and decompose very slowly once they are released into 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.

c. Risks. Toxicity and exposure are the two basic components of risk. EPA has concluded that exposure of humans or the environment to PCBs may be significant, depending on such factors as the quantity of PCBs involved in the exposure and the effect of exposure. Minimizing exposure to PCBs should minimize potential risk. As shown through the 40 CFR Part 761 regulations that detail proper disposal and storage options,

EPA has previously determined that some activities, including the disposal of PCBs, 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 Section V of this preamble, 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 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 expects a petitioner to demonstrate in its petition how this standard is met. (See 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 can demonstrate that time and effort have been expended to develop or search for a substitute. In each case, the burden is on the petitioner to show specifically what was done 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 activities should occur in the United States and what steps have been taken to develop a substitute. While requiring a petitioner to demonstrate that

good faith efforts to develop a substitute for PCBs makes sense when dealing with exemption petitions for traditional manufacture and distribution in commerce, 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 PCB waste. However, because section 6(e)(3)(B) allows a petitioner to request an exemption from any of the prohibitions listed in section 6(e)(3)(A), EPA believes that it is appropriate to apply the standard in a way that is relevant to the particular exemption requested. Therefore, EPA believes that the relevant "good faith" issue for an exemption request to import PCBs for disposal in the customs territory of the United States is whether the disposal of the waste could and/or should occur outside the United States.

V. Final Disposition of This Exemption Petition

A. The Petition: April 23, 2013 Petition to Import PCBs Located in Japan

On April 23, 2013, DLA submitted a petition seeking a 1–year exemption to import PCBs and PCB Items currently in storage at U.S. military installations in Japan (Ref. 1). DLA estimates that as much as 1,014,222 pounds of waste contaminated with PCBs could be generated in Japan through the calendar year 2014. The material in Japan consists of transformers (drained and un-drained), large and small capacitors, voltage regulators, switches, electromagnets, circuit breakers, reclosers, electrical cable, electric light ballasts, used dielectric fluids containing PCBs, and PCB-contaminated soil and debris (*e.g.*, rags, small parts, packaging materials). Ninety four percent of the waste is at PCB concentrations below 50 ppm. Details of the particular amounts and concentrations DLA is petitioning to import can be found in Attachment 1 of the DLA petition, which can be

found in the docket. EPA has concluded that import of DLA's PCBs will not cause a shortage of domestic PCB storage or disposal capacity. In addition, EPA has concluded that the amounts of PCBs available for import are small in comparison to domestic generation, and pose little threat of overwhelming domestic disposal capacity. (Ref. 4)

1. *Information regarding no unreasonable risk provided by the petitioner*. DLA will package, transport, treat, and dispose of these PCBs in the same manner as PCBs identified in its previous petitions, which EPA granted in 2003 and 2007 to allow the import of up to 4,293,621 and 1,328,428 pounds of waste contaminated with PCBs, respectively (Ref. 2, 3). Specifically, DLA notes its adherence to applicable modal and inter-modal national and/or international packaging, marking, labeling and shipping paper regulations, such as the United Nations (UN) Performance Oriented Packaging (POP) standards, the International Maritime Dangerous Goods (IMDG) Code/International Maritime Organization (IMO) requirements, the International Civil Aviation Organization (ICAO) Technical Instructions, requirements of the International Air Transport Association (IATA), UN Recommendations on the Transport of Dangerous Goods Code, and provisions of the Hazardous Materials Regulations at 49 CFR 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 further indicates that it will handle and dispose of all PCBs and PCB Items in conformance with the PCB regulations at 40 CFR Part 761. DLA has considerable experience and expertise in awarding and administering disposal contracts for PCBs and PCB Items in the U.S. and will award contracts with commercial firms in accordance with all applicable Federal procurement statutes and the Federal Acquisition Regulations

(FAR). DLA additionally notes that only companies with the required Federal and/or state-permits for the transportation, storage, treatment and disposal of PCBs and PCB Items would be considered as eligible for award of such contracts. DLA's exemption petition does not request to limit the storage, treatment or disposal of PCBs and PCB Items imported from Japan to management at a particular facility; rather DLA requests that any storage, treatment, or disposal facility that has the appropriate Federal and/or state permits for PCBs and PCB Items and for which DLA has entered a contract be allowed to manage these materials.

DLA notes that it and its contractors have extensive experience in safely returning PCBs and PCB Items to the United States for treatment and disposal, and that DLA has returned several million pounds of PCBs and PCB Items for compliant disposal in the United States, including 3.6 million pounds of foreign-manufactured PCBs and PCB Items imported under the two previously granted exemptions[1]. Throughout the course of this experience, DLA has used the same standards and procedures discussed above without spills or safety problems affecting human health or the environment.

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

As DLA noted in its exemption request, there are significant impediments to disposal on DOD military installations in Japan. As noted in the DLA petition, while there may exist certain mobile technology capable of treating some of the PCBs and PCB Items generated by United States military forces in Japan, there are also significant

[1] As noted previously, DLA had authority to import up to 5.5 million pounds of PCBs and PCB Items.

impediments to obtaining the permits that would be required to have that technology approved for use on United States military installations, where residual wastes and metals would still need to be taken off-installation for disposal. 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 and PCB Items at any detectable concentration including concentrations below the very stringent 0.5 ppm level at which Japan regulates domestic PCBs. DLA’s market research suggested a potential could exist for disposal of some limited waste streams in newly permitted Japanese facilities (i.e., “off- installation” disposal). However, DLA has not been able to identify any change in Japanese law that would allow off-installation disposal in Japan nor the existence of any properly permitted vendor or technology that would be currently available to properly treat the DOD generated PCBs and PCB Items within the confines of the United States installations in Japan. Accordingly, on-site treatment does not present a reasonable alternative to the import of these wastes for proper disposal in the United States in compliance with TSCA Section 6(e)(3).

DLA further notes 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 PCBs and PCB Items generated or owned by DOD overseas. In particular, DLA discusses the difficulty of shipping waste from Japan to other countries as a result of the Basel Convention. Prior to its previous petitions, DLA and its primary disposal contractor made extensive contacts over a period of several years with Japanese officials and disposal facilities in numerous locations outside the United

States in an effort to identify firms who could dispose of such PCBs and PCB Items while satisfying the Basel Convention requirements. At that time, the DOD also consulted at length with the State Department officials in Japan and in the United States whose responsibilities include international environmental matters. The variety of problems identified in these contacts regarding overseas disposal of certain PCB Items resulted in a consensus that use of existing facilities in other developed countries was not a reasonable alternative. Even if other countries had the physical capacity to accept these wastes, non-governmental organizations might be expected to oppose the DOD's disposal of its waste in third countries (that is, countries other than Japan and the United States) because the United States has the technical capability to properly dispose of the hazardous materials itself.

DLA concludes that its diligent but so far unsuccessful attempts to locate appropriate disposal sites outside the United States demonstrate its good faith efforts to pursue alternatives to disposal within the United States and fulfill the requirements of TSCA 6(e)(3)(B).

B. EPA's Final Decision on the Petition: April 23, 2013 Petition; EPA is Granting this Petition

1. *No unreasonable risk determination*. EPA finds generally that the disposal of imported PCBs and PCB Items 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, as with the previous two petitions, 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. Therefore, for the following reasons, EPA finds that

there is no unreasonable risk from importing the PCBs and PCB Items by DLA from Japan to the United States for disposal, as outlined below.

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 (Ref. 4), the likelihood of exposure to PCBs is commensurately low. Consequently, the probability of adverse effects to human health or the environment is low.

iii. The PCB-containing materials will be packaged in a manner consistent with Federal, State, and local regulations addressing the risks associated with the storage and transportation of hazardous wastes. 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 generally have a low combustion likelihood, 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, any risk resulting from the combined exposure and hazard potential is expected to be low to human health or the environment.

v. The potential for human health risks are further mitigated by the limited 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 will be in place. Furthermore, the alternative of storing the PCBs indefinitely seems to pose more risk than transport. Moreover, should an accident occur, emergency response authorities 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 finds that DLA has demonstrated good faith efforts to find alternatives to disposal of this PCB waste in the United States. EPA acknowledges the restrictions to disposing of this waste in Japan. DLA has also explored exporting this waste to other

countries as an alternative. However, DLA has indicated, and EPA acknowledges, the peculiar circumstances of DOD's PCBs and PCB Items, which, while present in one country (i.e., Japan), are generated by another country's government, leading to significant difficulty in providing Basel Convention notification to third party countries. Given these difficulties, EPA concurs with DLA's conclusion that disposal in a third country (that is, countries other than Japan and the United States) 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 DLA to import 1,014,222 pounds of waste contaminated with PCBs (94% of which is less than 50 ppm) will benefit the United States and the environment in general. As DLA notes, the continued long-term storage of PCB waste on U.S. military facilities in Japan poses risks 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 PCBs and PCB Items 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. Granting the petition is the only practical mechanism to remove this waste from Japan; otherwise, the U.S. military would be required to explain 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.

VI. References

1. DOD, DLA. Petition from David Rodriguez, Director to EPA. Subject: Petition to the United Sates Environmental Protection Agency For an Exemption Under the Toxic Substances Control Act to Import Polychlorinated Biphenyls (PCB) and PCB Items for Disposal. April 23, 2013. 19 pp.
2. EPA, OPPT. Polychlorinated Biphenyls; Manufacturing (Import) Exemption. Final Rule. Federal Register (72 FR 53152, April 30, 2007) (FRL–8143–4). Available on-line at https://www.federalregister.gov/articles/2007/09/18/E7-18345/polychlorinated-biphenyls-manufacturing-import-exemption, Document ID: EPA-HQ-OPPT-2005-0042-0008.
3. EPA, OPPT. Polychlorinated Biphenyls; Manufacturing (Import) Exemptions. Final Rule. Federal Register (68 FR 4934, January 31, 2003) (FRL–7288–6). Available on-line at http://www.federalregister.com/Browse/Document/usa/na/fr/2003/1/31/03-2344, Document ID: EPA-HQ-OPPT–2002– 0013-0041.
4. 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/EPA-TOX/1996/March/Day-18/pr-24122.txt.html.
5. EPA, OPPT. Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations. Advanced Notice of Proposed Rulemaking. Federal Register (75 FR 17645, April 7,

2010). (FRL– 8811–7). Available on-line at *http://www.regulations.gov*, Document ID: EPA-HQ-OPPT–2009– 0757–0001.

6. The U.S. Department of Agriculture, Public Health Service, Agency for Toxic Substances and Disease Registry (ATSDR) Toxicological Profile for Polychlorinated Biphenyls (PCBs) (November 2000). Available online at http://www.atsdr.cdc.gov/toxprofiles/tp17.pdf.

VII. Statutory and Executive Order Reviews

As explained above, this action will only grant an exemption for one year for the DLA to import PCB waste from military operations in Japan. For that reason, this action:

- is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), for State, local, or tribal governments or the private sector and contains no regulatory requirements that might significantly or uniquely affect small governments;
- does not have Federalism implications as specified in Executive Order 13132: Federalism (64 FR 43255, August 10, 1999);
- does not have tribal implications as specified by Executive Order 13175: Consultation and Coordination with Indian Tribal Governments (65 FR 67249,

November 9, 2000), because, as the rule does not make any substantive changes, it will not impose substantial direct costs on tribal governments or preempt tribal law;

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045: Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997);
- is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866;
- does not involve technical standards, thus the requirements of §12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply; and
- does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations under Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994) because it does not affect the level of protection provided to human health or the environment.

A. Regulatory Flexibility Act

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 direct final 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. from Japan for proper disposal.

B. Congressional Review Act

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. Under the CRA, a "major rule" cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations 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.

Subpart E – [Amended]

2. Section 761.80 is amended by revising 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 April 23, 2013 petition for an exemption for 1 year beginning on July 1, 2014, to import up to

1,014,222 pounds of PCBs and PCB Items stored or in use in Japan as identified in its petition for disposal.

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