

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 761**

[OPPTS-66020; FRL-6750-6]

**Polychlorinated Biphenyls (PCB's);
Return of PCB Waste from U.S.
Territories Outside the Customs
Territory of the United States****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed Rule.

SUMMARY: EPA is proposing to clarify that PCB waste in United States' territories and possessions outside the customs territory of the United States may be returned to the U.S. Customs Territory for proper disposal. This proposed rule interprets the prohibition on the manufacture of PCBs at Section 6(e) of the Toxic Substances Control Act (TSCA) to allow the movement of PCB waste among any States of the United States for the purpose of disposal, and that such movement is not considered "import." This interpretation will allow U.S. territories and possessions which fall outside of the definition of "customs territory of the United States" to dispose of their PCB waste in the mainland of

the United States where facilities are available that can properly dispose of PCB waste. Thus, this rule would ensure that a safe and viable mechanism exists for the protection of health and the environment for those citizens in areas of the United States where facilities are not available for the proper management and disposal of PCB waste. Because disposal of these wastes may occur only at approved facilities, no unreasonable risks to health or the environment on the mainland United States will be created by this rule.

DATES: Comments, identified by the docket number OPPTS-66020, must be received by EPA on or before December 1, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION** section. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS-66020 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: For general information contact: Barbara Cunningham, Acting Director,

Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: 202-554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Peggy Reynolds, OPPT/NPCD, 7404, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-260-3965; fax number: 202-260-1724; e-mail address: reynolds.peggy@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information***A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are in a United States territory or possession outside of the customs territory of the United States, and you manufacture, process, distribute in commerce, or use PCBs. Examples of such territories and possessions are Guam, American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI) including Saipan, and the United States Virgin Islands. Potentially affected entities may include, but are not limited to:

Types of entities	NAICS codes	Examples of potentially affected entities
Crude Petroleum and Natural Gas Extraction	211111	Facilities that own electrical equipment containing PCBs
Electric Power Generation; Transmission and Distribution	2211	Facilities that own electrical equipment containing PCBs
Food Manufacturing	311	Facilities that own electrical equipment containing PCBs
Petroleum and Coal Products Manufacturing	324	Facilities that own electrical equipment containing PCBs
Chemical Manufacturing	325	Facilities that own electrical equipment containing PCBs
Primary Metal Manufacturing	331	Facilities that own electrical equipment containing PCBs
Waste Treatment and Disposal	5622	Facilities that own electrical equipment containing PCBs. Entities that process and distribute PCB waste
Materials Recovery Facilities	56292	Facilities that own electrical equipment containing PCBs. Entities that process and distribute PCB waste
Public Administration	92	Agencies that own electrical equipment containing PCBs

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 above could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action 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 in the **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at <http://www.epa.gov/>. On the Home Page select "Laws and Regulations" and then look up the entry for this document under **Federal Register**—Environmental Documents. You can also go directly to

the **Federal Register** listings at <http://www.epa.gov/fedrgstr/>.

Information about the Office of Prevention, Pesticides and Toxic Substances (OPPTS) and OPPTS related programs is available from <http://www.epa.gov/internet/oppts/>. If you want additional information about EPA's PCB regulations at 40 CFR part 761, go to <http://www.epa.gov/pcb>.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS-66020. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable

comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, Northeast Mall, Rm. B-607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260-7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS-66020 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: the OPPT Document Control Office (DCO) in East Tower Rm. G-099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is 202-260-7093.

3. *Electronically.* You may submit your comments electronically by E-mail to: oppt.ncic@epa.gov, or mail or deliver your computer disk to the addresses identified above. Do not submit any information electronically that you consider to be CBI. E-mailed comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on standard computer disks in WordPerfect 689 or ASCII file format. All comments in electronic form must be identified by the docket control number OPPTS-66020. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. What Action is the Agency Taking?

EPA proposes to amend the disposal regulations at 40 CFR 761.99 to allow certain PCB waste located anywhere in the United States, including the territories and possessions of the United States that are not inside the customs territory of the United States (hereafter "territories and possessions"), to be moved to any area within the United States for disposal. The proposed rule would clarify that such movement is not considered "import" for purposes of the ban on manufacturing PCBs under TSCA section 6(e)(3).

B. What is the Agency's Authority for Taking this Action?

EPA is taking this action to clarify its interpretation of the TSCA provisions relating to the manufacture of PCBs as an exercise of the agency's inherent authority to issue regulations interpreting the statutes it administers. This proposed regulation would codify EPA's interpretation of an undefined term, "import" in the definition of "manufacture" under section 3(7) of TSCA, for purposes of section 6(e)(3) of TSCA. EPA's definition of the term "import" for all other purposes under TSCA is not affected.

III. Summary of the Proposed Action

A. What Risks do PCBs Present and How are PCBs Regulated?

PCBs cause significant ecological and human health effects, including cancer, neurotoxicity, reproductive and developmental toxicity, immune system

suppression, liver damage, skin irritation, and endocrine disruption (Ref. 1). EPA has found 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 (40 CFR 761.20). PCBs are readily absorbed through the skin and 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. Significantly, bioaccumulated PCBs appear to be even more toxic than those found in the ambient environment, since the more toxic PCB congeners are more persistent and thus more likely to be retained (Ref. 1).

Under section 6(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), and implementing regulations at 40 CFR part 761, the manufacture, processing, and distribution in commerce of PCBs are banned unless EPA issues a regulatory exemption to the ban. The ban on manufacture of PCBs was designed to prevent the creation or introduction to the United States of new PCBs, and it has been largely successful. Use of PCBs is banned except in a totally enclosed manner or as authorized by rule based on a finding that the use will not pose an unreasonable risk to human health or the environment. Disposal of PCBs is strictly controlled to minimize release to the environment. By enacting TSCA section 6(e), Congress established a presumption that PCBs pose an unreasonable risk of injury to health and the environment. *See, Central and Southwest Services, et al. v. EPA*, 220 F.3d 683, 688 (5th Cir. 2000).

Before the statutory ban was enacted in 1976, PCBs were widely used in industrial applications, particularly as insulating fluids in electrical equipment. Utilities and other industries lawfully manufactured and sold items such as PCB electrical equipment and hydraulic or heat transfer equipment. After TSCA's general bans on manufacture, processing, distribution in commerce, and use of such items went into effect, EPA authorized the continued use of much of this equipment subject to conditions that protect against an unreasonable risk to health or the environment from the PCBs in the equipment. As these items reach the end of their useful lives, the owners are responsible for disposing of them following the stringent requirements of 40 CFR part 761. Any PCBs that are released from the equipment also must

be disposed of following these requirements.

TSCA was enacted to protect all of the citizens of the United States from unreasonable risk of injury to health or the environment from exposure to chemical substances. TSCA sections 3(13) and 3(14) define "United States" to include "any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States." Thus, the prohibitions and restrictions on PCBs under TSCA section 6(e) and its implementing regulations protect not only United States citizens in the 50 States, but United States citizens in all the territories and possessions of the United States. PCBs in the 50 States and in the territories and possessions must be managed and disposed of in a manner that does not present an unreasonable risk to health or the environment.

B. What Special Problems Do PCBs Present in the Territories and Possessions?

PCBs and PCB waste in the territories and possessions pose an especially great environmental threat. The territories and possessions have no permitted commercial PCB disposal facilities, so PCB waste is accumulated in long-term storage. Many of the territories and possessions are subject to frequent typhoons and earthquakes, which can severely damage storage areas and other buildings. PCBs and PCB waste in storage therefore may present a greater risk to human health and the environment than PCBs stored in the mainland United States (Ref. 8).

Between 1945 and 1990, within 180 nautical miles of Guam, there were 118 tropical storms (wind speed 40 to 72 mph), 36 typhoons (wind speed 75 to 149 mph), and 8 super-typhoons (wind speed 150 mph or more). Between 1973 and 2000, Guam has seen an average of 18 earthquakes a year within a 100 kilometer radius. During the last 10 years, 12 earthquakes of magnitude 5 or higher have occurred within a 50 kilometer radius of Guam. The Commonwealth of the Northern Marianas Islands is 120 miles from Guam and shares similar geologic characteristics, so the risks would be similar (Ref. 8).

The Samoas lie squarely within the South Pacific's notorious cyclone belt. In American Samoa, Cyclone Tusi caused extensive damage to property, vegetation, and wildlife in 1987. Cyclones occur, on average, every 10 to

15 years, but in the early 1990s, the Samoas were devastated by two of the strongest and most destructive storms on record. Cyclone Ofa struck in February, 1990, bringing winds of up to 250 kilometers per hour, killing 16 people and leveling much of the island of Savai'i. In 1991, Cyclone Val pummeled the islands for 5 days with winds up to 260 kilometers per hour and waves of up to 25 meters in height. Although the storm destroyed nearly three times as much as its predecessor, the death toll was the same. Total damage was estimated at \$380 million (Ref. 8).

PCBs that are released to the environment in the territories and possessions, through natural disasters or other events, can present significant exposure risks to residents of these areas. Many island residents consume fish for subsistence, and PCBs bioaccumulate in fish. In addition, island natural resources are severely limited and therefore vulnerable. Even a small quantity of PCBs seeping into the groundwater system could permanently eliminate an island's only source of clean drinking water (Ref. 8).

Disposal of PCBs in the territories and possessions presents a special challenge. Most PCBs that are regulated for disposal must be disposed of in a TSCA-approved facility, such as an incinerator or a chemical waste landfill (40 CFR part 761, subpart D). However, as noted above, there are no TSCA-approved commercial PCB disposal facilities in any of the territories or possessions of the United States (Ref. 6), so disposal in the territory or possession where the waste is generated is not possible in most cases. A recent survey of the status of PCB waste in the territories and possessions shows that, because of the lack of disposal options, PCB wastes have been placed in storage awaiting disposal in facilities that are not approved commercial storage facilities under TSCA. In some cases, spills or releases from these facilities are inadequately controlled, presenting risks to health and the environment (Ref. 8).

The territories and possessions cannot dispose of their waste at facilities outside the United States if the PCB concentration is ≥ 50 ppm because EPA regulations prohibit the export for disposal of such waste (see 40 CFR 761.97). Moreover, it is a violation of the PCB regulations to dilute PCB wastes to lower concentrations to avoid these restrictions on export (40 CFR 761.1(b)(5)). Even if such export were not prohibited, it is not clear that export would be a viable option. Even assuming that foreign countries would

be willing to accept PCB waste from the United States, there is some uncertainty about the disposal capacity at foreign disposal sites capable of managing PCBs (Ref. 17). Furthermore, EPA disfavors disposing of PCB wastes generated in the United States in other countries.

The only remaining disposal option for most TSCA-regulated PCB waste in the territories and possessions is disposal in one of the TSCA-approved facilities in the mainland United States. However, EPA has historically interpreted TSCA in a way that made this option unavailable. Since 1979, TSCA section 6(e) has banned the manufacture of PCBs except under an exemption issued by rulemaking. TSCA section 3(7) defines "manufacture" to include "import into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States)." General note 2 defines the "customs territory of the United States" as "any State of the United States, the District of Columbia, and Puerto Rico." Thus, any movement of PCBs from a location outside the customs territory of the United States to a location inside the customs territory could be considered to be an import of PCBs into the customs territory of the United States. Since most of the territories and possessions, such as Guam and American Samoa, are not included within the definition of "customs territory of the United States" as found in the Harmonized Tariff Schedule, EPA has historically interpreted a movement of PCBs from one of these areas to a mainland State to be an "import" within the meaning of "manufacture" as it is used in TSCA section 6(e)(3). EPA has in the past exercised limited discretion to allow the movement of PCB waste from U.S. territories and possessions to the mainland United States (Ref. 15).

C. How Would This Proposed Rule Address Disposal of PCBs in the Territories and Possessions?

EPA proposes to amend its regulations to allow the movement of PCB waste for disposal among any States of the United States, as defined in TSCA sections 3(13) and 3(14), regardless of whether the waste enters or leaves the customs territory of the United States, provided that the PCBs [or the PCB waste] were present in the United States on January 1, 1979, when the ban on manufacturing took effect, and have remained within the United States since that date. EPA would not consider these movements to be imports subject to the ban on manufacturing under TSCA sections 3(7) and 6(e)(3).

As noted above, the territories and possessions are subject to all of TSCA's requirements. EPA is charged with implementing section 6(e) to protect the health and environment of all United States citizens, including the residents of the territories and possessions. To interpret the statute as prohibiting the movement of PCB waste from the territories and possessions to disposal facilities in the United States mainland puts the residents of the territories and possessions at a serious disadvantage compared to residents of areas that fall within the definition of the customs territory. Because there are no EPA-approved commercial PCB storage or disposal facilities outside the customs territory, and because of the unique environmental conditions in the territories and possessions, the United States citizens of these areas are subject to a higher likelihood of exposure to PCBs, and thus a higher risk of injury.

Moreover, EPA is particularly concerned about the risks from improper disposal of PCBs wherever it may occur. PCBs are persistent in the environment and can become dispersed world-wide. Research supporting EPA's report to Congress, *Deposition of Air Pollutants to the Great Waters* (Refs. 2, 3, 4 and 5), indicates that up to 89% of the PCB loading for Lake Superior occurs through air deposition, much of it from distant sources. Figures for the other Great Lakes range from 6% to 63%. 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 United States facilities poses less risk of injury to health or the environment in the United States than the continued presence of PCBs in the territories and possessions, since proper disposal in this country provides protection against possible hazards from improper disposal elsewhere.

EPA is also concerned that the only options currently available for handling PCBs in the territories and possessions may violate the requirements of TSCA and its implementing regulations. Indefinite storage of PCB waste is not lawful under EPA's regulations at 40 CFR 761.65. Disposal in a facility that is not EPA-approved would also violate the regulations. As noted above, shipment of any wastes containing PCBs ≥ 50 ppm to a foreign country for disposal would violate the export prohibition. In contrast, residents of areas inside the customs territory that do not have EPA-approved PCB disposal facilities can simply ship their PCB wastes to an approved facility in

another State. For example, the residents of Alaska and Hawaii, States in which no TSCA-approved disposal facilities are located, can ship their PCBs to facilities in the mainland United States for disposal (Ref. 13), in spite of the fact that it is impossible to move wastes from those States to the mainland without either entering Canada or crossing international waters (40 CFR 761.99).

EPA has determined that its previous interpretation of the definition of "manufacture" is not mandated by the language of TSCA, results in inequitable treatment among different areas within the United States, does not adequately protect health and the environment throughout the United States, and therefore is not in the public interest. EPA believes that the term "import," as commonly understood, was not intended to include the movement of PCB waste that has never been outside the United States or outside the regulatory control of TSCA (after enactment) from one area of the United States (the territories and possessions) to another area of the United States (the mainland) for disposal. There is an obvious distinction between that type of movement and the introduction of a chemical into the United States from a foreign country, which is clearly an import. This latter category is much more analogous to the manufacture of a new chemical substance in the United States. Therefore, EPA proposes to interpret the movement of PCB waste from the territories and possessions into the customs territory of the United States for disposal not to be an import, and therefore not within the ban on manufacture under TSCA section 6(e).

This proposed interpretive rule would allow the movement of PCB waste for disposal among any States of the United States, as defined in TSCA sections 3(13) and 3(14), regardless of whether the waste enters or leaves the customs territory of the United States, provided that the PCBs in the waste were present in the United States on January 1, 1979, when the ban on manufacturing took effect, and has remained within the United States since that date. This would allow PCB waste that was present in the territories and possessions at the time TSCA's ban on manufacturing took effect, and that remained within the territories and possessions since that date, to be stored and disposed of in any facility in the United States that meets the requirements of 40 CFR part 761, subpart D. It would also allow PCBs that were present in the territories and possessions at the time TSCA's bans took effect, but were not designated as waste until after that date, to be stored

and disposed of in any subpart D facility in the United States, as long as the PCBs and PCB waste had remained in the United States. Finally, it would allow PCBs or PCB wastes that were transferred from an area in the United States that is outside the territories and possessions, but that was moved to a territory or possession after January 1, 1979, and that has never left the United States, to be stored and disposed of in any subpart D facility in the United States. EPA would not consider movement of any of these wastes to the customs territory of the United States to be an import subject to the ban on manufacturing under TSCA section 6(e).

This proposed rule would apply to PCB waste that is present in the territories and possessions as the result of conduct that was legal at the time it occurred (for example, PCB materials that were brought to the territories before TSCA's ban on distribution in commerce became effective), and that has been subject to regulation under TSCA throughout its lifespan; or PCB equipment that was lawfully in use in one of the States, that was transferred to a territory or possession for continued lawful use, and that reached the end of its useful life and became subject to disposal while in the territory or possession.

This proposed amendment would also be consistent with EPA's longstanding policy that it does not interpret movement of PCBs purchased or procured in the United States by the Federal Government, taken overseas for use in United States Government facilities, remained under the control and jurisdiction of the United States Government, and subsequently returned to the United States for disposal in an approved facility as either exports or imports for purposes of TSCA section 6(e) (Refs. 14 and 16). EPA established this policy because the wastes had always been the property of the United States and disposal facilities for these wastes might not be readily available overseas.

This proposed rule would not allow disposal in the United States of PCBs transported to the territories and possessions from foreign countries after the effective date of the ban on manufacture in TSCA section 6(e)(3). The purpose of this proposal is to ensure that all United States PCB waste can be disposed of in compliance with the requirements of TSCA section 6(e) and its implementing regulations. This proposal is not intended to allow the territories and possessions to become a conduit to the United States for PCB waste generated in other countries.

Finally, EPA has not made a formal finding of "no unreasonable risk" for this proposed regulation. This regulation is not being proposed under TSCA section 6(e), but rather as an exercise of EPA's inherent authority to interpret the statutes it administers.

IV. References and Documents in the Record

As indicated in Unit I.B.2., the official record for this rulemaking has been established under docket control number OPPTS-66020, the public version of which is available for inspection as specified in Unit I.B.2. The following is a listing of the documents that have already been placed in the official record for this rulemaking:

A. Federal Register Notices

1. U.S. Environmental Protection Agency (USEPA). 44 FR 31514, May 31, 1979, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions: Final Rule."
2. USEPA. 45 FR 29115, May 1, 1980, "Polychlorinated Biphenyls (PCBs); Expiration of the Open Border Policy for PCB Disposal: Notice." OPPTS 62008.
3. USEPA. 59 FR 62788, December 6, 1994, "Disposal of Polychlorinated Biphenyls: Proposed Rule." OPPTS-66009A.
4. USEPA. 61 FR 11096, March 18, 1996, "Disposal of Polychlorinated Biphenyls; Import for Disposal: Final Rule." OPPTS-66009B.
5. USEPA. 63 FR 35384, June 29, 1998, "Disposal of Polychlorinated Biphenyls (PCBs): Final Rule." OPPTS-66009C.

B. Reference Documents

1. USEPA, Office of Research and Development (ORD). PCBs Cancer Dose-Response Assessment and Application to Environmental Mixtures. EPA600P-96001F (September 1996): 75pp. OPPTS-66009C.
2. USEPA, Office of Air Quality Planning and Standards (OAQPS). Deposition of Air Pollutants to the Great Waters, First Report to Congress. EPA-453R-93-055 (May 1994): 136pp. OPPTS-66009B.
3. USEPA, OAQPS. Identification of Sources Contributing to the Contamination of the Great Waters by Toxic Compounds. EPA-453R-94-087 (March 17, 1993): 145pp. OPPTS-66009B.
4. USEPA, OAQPS. Relative Atmospheric Loadings of Toxic Contaminants and Nitrogen to the Great Waters. EPA-453R-94-086 (March 15, 1993): 142pp. OPPTS-66009B.
5. USEPA. Chapter 2.2, Exposure and Effects of Airborne Contamination to the Great Waters Program Report. EPA-453R-94-085 (December 22, 1992): 201pp. OPPTS-66009B.
6. USEPA, Office of Prevention, Pesticides, and Toxic Substances (OPPTS). Commercially Permitted PCB Disposal Companies (April 2000): 3pp.

7. USEPA, Office of Pollution Prevention and Toxics (OPPT). Excerpt from the PCB Waste Handler Database; Facility Information for U.S. Territories and Possessions (September 27, 2000): 12pp.

8. USEPA, Region IX. Memo from Lily Lee, Guam Program Manager, to Enrique Manzanilla, Director, Cross Media Division, Re: Summary of PCB Waste Quantities and Concentrations in the US Territories (July 19, 2000): 5pp.

9. Unitek Environmental-Guam. Letter from LeRoy Moore, President, to John Malone [sic], Director, National Program Chemicals Division, Re: PCB Shipments from Guam and Possessions of the United States for Disposal in the Mainland United States (May 11, 2000): 2pp.

10. USEPA, OPPT. Note from Peter Gimlin to the File, Re: Unitek Environmental-Guam (UEG) Meeting (September 27, 2000): 1p.

11. U.S. Congress. Letter from Robert A. Underwood, House of Representatives, to Carol M. Browner, Administrator, EPA, Re: Disposal of Polychlorinated Biphenyls (PCBs) from Guam and the Other U.S. Territories (April 12, 2000): 2pp.

12. USEPA, Region IX. Letter from Felicia Marcus, Regional Administrator, to Robert A. Underwood, U.S. House of Representatives, Re: Disposal of Polychlorinated Biphenyl Waste (February 4, 2000): 2pp.

13. USEPA, OPPT. Memo from John W. Melone, Director, Chemical Management Division, to George Abel, Chief, Pesticides and Toxic Substances Branch, USEPA Region X, Re: Transit of PCB Waste Generated in the United States Through a Foreign Country (January 19, 1995): 2pp.

14. USEPA, OPPT. Letter from John W. Melone, Director, Chemical Management Division, to Arthur J. Brown, National Science Foundation, Re: Request to Return PCBs in Antarctica to the United States for Disposal (March 11, 1994): 3pp.

15. USEPA, OCM and OE. Letter from Michael F. Wood, Director, Compliance Division, and Michael J. Walker, Enforcement Counsel for the Toxics Litigation Division, to Marion P. Herrington, General Electric Company, Re: Transfer of PCB Waste Generated in A U.S. Territory to An Approved Disposal Facility in the Continental United States (August 14, 1992): 2pp.

16. USEPA, Office of Toxic Substances (OTS). Letter from Don R. Clay, Director to Colonel Joseph T. Cuccaro, Defense Logistics Agency, Re: USEPA Position on DOD Owned PCB Fluid Located Abroad and Returned to the U.S. for Disposal (February 7, 1984): 3pp.

17. United Nations Environment Programme (UNEP). Inventory of World-wide PCB Destruction Capacity, First Issue (December 1998): 85pp.

18. U.S. Congress. Congressional Record from the House of Representatives, H8598, Guam's Environmental Problems (October 2, 2000): 1p.

19. U.S. Congress. Letter from Robert A. Underwood, House of Representatives, to Carol Browner, Administrator, EPA, Re: Inability of Guam to Import PCBs into the U.S. Mainland for Proper Disposal (December 10, 1999): 2 pp.

20. USEPA, OPPTS. Letter from Susan H. Wayland, Acting Assistant Administrator, to

Robert A. Underwood, U.S. House of Representatives, Re: Disposal of PCB Waste in Guam (June 14, 2000): 2 pp.

21. USEPA, OPPTS. Letter from Susan H. Wayland, Acting Assistant Administrator, to Robert A. Underwood, U.S. House of Representatives, Re: Meeting on PCB Waste in Guam (September 29, 2000): 2 pp.

V. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that this action is not a "significant regulatory action" subject to review by 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. This proposed rule simply clarifies EPA's interpretation of the TSCA section 6(e) provisions relating to the manufacture of PCBs.

B. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq., the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is that this action is not expected to result in any direct adverse impact for small entities. This rule interprets the prohibition on the "manufacture of PCBs" in a manner which affords U.S. citizens (including small entities) residing in U.S. territories and possessions located outside the "customs territory of the United States" an opportunity to dispose of PCB waste when facilities that require EPA approval to manage PCB waste are not readily available. This rule is being promulgated in the public interest to ensure equitable treatment among different areas within the United States and adequate protection of health and the environment throughout the United States. This rule provides a mechanism for the disposal of PCB waste resulting from natural disasters (e.g., tropical storms, cyclones, typhoons and hurricanes), former use of U.S. territories and possessions for defense purposes, spills of PCBs and when PCB equipment has reached the end of its natural life span.

C. Paperwork Reduction Act (PRA)

This regulatory action does not contain any information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq.

D. Unfunded Mandates Reform Act (UMRA)

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, EPA has determined that this action does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local or tribal governments, in the aggregate, or on the private sector in any one year. The UMRA requirements in sections 202, 204, and 205 do not apply to this rule, because this action does not contain any "Federal mandates" or impose any "enforceable duty" as defined by UMRA on State/Tribal, or local governments or on the private sector. The requirements in section 203 do not apply because this rule does not contain any regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications, because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action interprets the TSCA prohibition on the manufacture of PCBs in a manner which allows PCB waste in U.S. territories and possessions located outside of the customs territory of the U.S. to be disposed of in EPA-approved facilities on the mainland of the United States. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments.

If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose substantial direct compliance costs on such communities. It interprets the TSCA prohibition on the manufacture of PCBs in a manner which allows PCB waste in U.S. territories and possessions located outside of the customs territory of the U.S. to be disposed of in EPA-approved facilities on the mainland of the United States. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Executive Order 12898

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. EPA finds that the amendments in this proposed rule will reduce the risk to human health and the environment from exposure to PCBs, particularly in low-income and minority communities. This proposed

rule would allow PCB waste found in U.S. territories and possessions located outside of the customs territory of the U.S. to be disposed of in EPA-approved facilities on the mainland of the United States.

H. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), does not apply to this rule, because it is not "economically significant" as defined under Executive Order 12866, and does not involve decisions on environmental health risks or safety risks that may disproportionately affect children. This proposed regulation would allow PCB waste in U.S. territories and possessions located outside of the customs territory of the U.S. to be disposed of in EPA-approved facilities on the mainland of the United States. Therefore, the disposal of PCB waste will occur where children are either not present or not permitted, and the disposal activity will pose no special risks to children. Also, the rule will prevent exposure of children in U.S. territories and possessions to PCBs that might result from improper storage or disposal of PCB waste.

I. National Technology Transfer and Advancement Act (NTTAA)

This regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

J. Executive Order 12630

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 rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

K. Executive Order 12778

In issuing this 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).

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated Biphenyls (PCBs), Recordkeeping and reporting requirements.

Dated: October 24, 2000.

Carol M. Browner,
Administrator.

Therefore, 40 CFR chapter I, part 761 is proposed to be amended as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 will continue to read as follows:

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

2. Section 761.99 is amended by adding paragraph (c) to read as follows:

§761.99 Other transboundary shipments.

* * * * *

(c) PCB waste transported from any State to any other State for disposal, regardless of whether the waste enters or leaves the customs territory of the United States, provided that the PCB waste or the PCBs from which the waste was derived were present in the United States on January 1, 1979, and have remained within the United States since that date.

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