ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPPTS–66020A; FRL–6764–9]

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: Final Rule.

SUMMARY: EPA is amending its rules in order to clarify that PCB waste in U.S. territories and possessions outside the customs territory of the United States may be moved to the customs territory of the United States for proper disposal. This 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 most PCB waste among any States of the United States for the purpose of disposal because such movement is not considered ''import'' for purposes of the definition of ''manufacture'' as that term is used in TSCA section 6(e)(3). 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 should be created by this rule.

DATES: This rule shall become effective April 30, 2001. This rule shall be promulgated for purposes of judicial review at 1 p.m. eastern standard time on April 13, 2001 (see 40 CFR 23.5, 59 FR 7271).

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 U.S. territory or possession outside of the customs territory of the United States, and you manufacture, process, distribute in commerce, use, or dispose of PCBs. Examples of such territories and possessions are Guam, American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), and the U.S. 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 electronic copies of this document and certain other related documents that might be available electronically, from the EPA Internet Home Page at *http://www.epa.gov*. To access this document, on the Home Page select ''Laws and Regulations'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the **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–66020A. 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.

II. Background

A. What Action is the Agency Taking?

EPA is amending 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. For purposes of the ban on manufacturing PCBs under TSCA section 6(e)(3), this rule clarifies that such movement is not considered ''import.''

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. As a result, the Agency has not made a formal finding of ''no unreasonable risk'' for this regulation as would be required for a regulation that is issued under section 6(e) of TSCA. This regulation codifies 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.

C. Why is the Agency Taking This Action?

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, sold, and used 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.

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 in these areas, therefore, may present a significantly greater risk to human health and the environment than PCBs stored in the mainland United States (Ref. 8). Because most of the population of the territories and possessions tend to be made up of minority or low-income communities, these risks present important environmental justice concerns. EPA has a strong commitment to ensuring the protection of these communities by mitigating their risk of exposure to PCBs to the greatest extent possible under the law.

For the reasons mentioned above and as discussed more fully in the preamble to the proposed rule (65 FR 65656–65658), EPA proposed 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). This movement would be allowed 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 then. EPA does not consider these movements to be imports subject to the ban on manufacturing under TSCA sections 3(7) and 6(e)(3).

III. Summary of the Final Action

In this action EPA is finalizing the rule as proposed.

A. What Comments Supported the Proposed Rule?

The Agency received 13 sets of comments from individuals in the environmental services and other U.S. industry, the U.S. Congress, and the Department of Defense, as well as representatives of some of the U.S. territories, and an environmental group. With one exception, all of the comments were in favor of the proposed action for the reasons that were cited in the preamble to the proposed rule (65 FR 65656–65658). In addition, many of the comments provide examples of situations in the U.S. territories which exist as a result of the previous interpretation of the statute. (The following discussions include a parenthetical reference to the docket number that was assigned by EPA to the comment.)

Several comments cited the burden that PCB waste cleanup activities create for inhabitants of U.S. territories that are not located within the customs territory of the United States. One commenter (C1–007) stated that millions of dollars are spent annually by the U.S. armed forces to clean up and remediate formerly used military dump sites which existed during World War II. PCBs and other contaminants (e.g., mustard gas and trichloroethylene (TCE)) that were buried on Guam are evident in the drinking water which comes from the island's sole source aquifer. In addition, efforts are currently underway to clean up PCBs from an old military power plant located in the village of Mong Mong, Guam, that have migrated into the Agana Swamp and adjacent farmed areas, which serve as a source of catfish, fruit and vegetables

that have been consumed by the village for many years. In describing the lack of disposal options that are available to inhabitants of Guam, the commenter cited unfair restrictions that allowed the U.S. Government to transport PCBs to Guam, but limits their return to the U.S. mainland for proper disposal.

In another set of comments (C1–009), the commenter related how PCB capacitors were sold to the U.S. military in Texas and were brought to the village of Tanapag in the Commonwealth of the Northern Mariana Islands, where the capacitors were abandoned about 40 years ago. Contaminated soil cleanup continues today. Efforts by the U.S. Army Corps of Engineers to dispose of PCBs onsite have resulted in the collection of contaminated soil in a single location within the village where the soil is exposed to rain and wind. According to the commenter, village residents have excess body loads of PCBs that have been verified by the Agency for Toxic Substances and Disease Registry (ATSDR), and EPA is currently conducting an evaluation of the degree of contamination of ground water and food sources used by the village. This commenter mentioned several difficulties that are associated with PCB contamination in U.S. territories. Specific difficulties include: a growing population and limited land which make it impossible to designate a location for hazardous waste disposal; there are no alternatives when the single source for water is contaminated; severe tropical storms, earthquakes or volcanic events, which are characteristic of the islands, increase the likelihood of the spread of PCB contamination; and subsistence economies are at risk by contamination and replacement sources of food may be unavailable or unaffordable. Although this commenter (C1–009) recognizes that the shipment of waste to the U.S. mainland is not without risk, he stated that leaving the waste in place is inconsistent with national goals of protecting human populations and the environment from exposure to PCBs.

A similar concern was repeated in another set of comments (C1–003) which stated that natural events can easily spread PCBs throughout the local environments to the detriment of ecosystems on which human, animal and plant life depend. Another commenter (C1–013) pointed out that U.S. territories rely on tourism for income, and as such, it is important to protect their ecosystems and natural resources. Since U.S. territories have sensitive ecosystems, limited natural resources and no TSCA facilities for proper treatment and disposal of PCB wastes, the commenter stated these areas face increased risk of costly, long-term PCB environmental and human health issues in the future. Another set of comments (C1–006) expressed support for the rule because there are no viable disposal options in the territories and the rule will require disposal to be conducted in strict compliance with the TSCA PCB regulations. This commenter believes it would be more protective to destroy wastes than to store the waste in areas of frequent hurricanes and earthquakes. Along those lines, another commenter (C1–007) believes it is in the interest of the island of Guam to ensure PCBs brought to Guam from the United States are returned to the United States for proper disposal. Still another commenter (C1–009) applauded EPA's efforts to correct the illogical distinction which currently exists and cited the disparity in EPA's 1984 policy which allowed U.S. manufactured PCBs to be returned to the United States as long as that waste remained under the control of the U.S. Government, but that same waste when found in U.S. territories could not be returned to the mainland for disposal. In this commenter's opinion, populations and environments located in U.S. territories were being treated with less care than those populations and environments that are outside the United States.

One commenter (C1–010) stated that the proposed rule properly recognizes that TSCA specifically defines territories or possessions of the United States, such as Guam, as ''States'' and reiterates that the term ''United States'' means all of the States (see Sec. 3(13) and 3(14)). Another commenter (C1–001) stated the previous interpretation prohibited U.S. territories from shipping PCB waste to approved disposal sites in compliance with applicable regulations and that the earlier interpretation has had an adverse effect on health and environment. These (C1–001, C1–003, C1–006, C1–007, C1–009, C1–010, C1–013) and other comments (C1–002, C1–008, C1–011) all support promulgating the rule as proposed.

B. What Comments Opposed the Proposed Rule?

1. *Legal authority*. In comments submitted during the comment period (C1–012) and in a follow-up letter (C1–014), a commenter argued that the rule violates TSCA section 6(e)(3), which bans the manufacture of PCBs unless EPA issues a regulatory exemption to the ban (C1–012). TSCA section 3(7) defines the term ''manufacture'' to include ''import into the customs territory of the United States.'' The commenter cited the decision in *Sierra Club* v. *EPA*, 118 F.3d 1324 (9th Cir. 1997), which held that, in banning manufacture of PCBs after January 1, 1979, Congress had also banned all import of PCBs after that date, because ''manufacture'' is defined to include import. The commenter viewed this rule as authorizing PCB waste to be imported into the customs territory of the United States, in violation of TSCA and the decision of the U.S. Court of Appeals for the Ninth Circuit.

First, the commenter argued that EPA may not ignore the statutory definition of ''manufacture,'' which includes ''import into the customs territory of the United States.'' This rule does not attempt to avoid the definition of ''manufacture.'' Instead, it clarifies what EPA will consider to be an ''import'' of PCBs into the customs territory of the United States for the purposes of that definition. While TSCA defines the term ''manufacture,'' it does not define the term ''import.'' The commenter believes that the phrase ''into the customs territory of the United States'' defines the word ''import,'' rather than modifies it. EPA disagrees with this interpretation. In this rule, EPA interprets the movement of certain PCB waste from areas within the United States but outside the customs territory of the United States to disposal facilities inside the customs territory of the United States not to be an ''import'' for purposes of TSCA section 6(e). EPA believes that ''import'' in this context applies to the initial introduction of particular PCBs into the United States (and the jurisdiction of TSCA), not the movement across the border of the customs territory of previously manufactured PCBs that have never left the regulatory jurisdiction of TSCA. For example, under TSCA, Guam is part of the United States, but it is outside the customs territory of the United States. Under this rule, it would not be an ''import'' of PCBs to transport PCB waste that was present in Guam on January 1, 1979, and has remained in Guam since that date, to an area inside the customs territory of the United States for disposal. Since this transport would not be an ''import,'' it would not be an act of ''manufacture'' which is banned under TSCA section 6(e)(3) and the Sierra Club decision. The definition of ''manufacture'' therefore is not a bar to the amendments in this rule.

Second, the commenter believed EPA ignored the definition of ''manufacture,'' which includes ''import into the *customs territory* of the United States [emphasis added]'' when it read sections 3(13) and 3(14) of TSCA as defining the ''United States'' to encompass territories and possessions of

the United States outside the customs territory of the United States. EPA disagrees with this comment. Under TSCA section 3(14), the term ''United States'' means ''all of the States.'' Under TSCA section 3(13), ''State'' means ''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 requirements of TSCA apply to PCBs in areas inside the customs territory of the United States (the 50 States, the District of Columbia, and Puerto Rico) as well as to areas outside the customs territory of the United States (the remaining territories and possessions). Persons who manage PCBs in areas outside the customs territory of the United States must manage and dispose of them in compliance with all of the regulations at 40 CFR part 761, yet they often lack adequate local storage and disposal facilities. As the commenter points out, in banning manufacture of PCBs, TSCA bans the import of PCBs into the customs territory. However, in this rule, EPA interprets the movement of certain PCB waste from areas within the United States (and therefore subject to TSCA) but outside the customs territory of the United States, to disposal facilities inside the customs territory of the United States not to be an ''import'' for purposes of the definition of ''manufacture'' as it applies to TSCA section 6(e) as long as the PCBs in the waste were present in the United States as the result of legal manufacture (i.e., manufacture prior to January 1, 1979) and have remained in the United States since that time. In doing so, EPA is not attempting to avoid that portion of the definition of ''manufacture'' that prohibits ''import into the customs territory of the United States.''

Third, the commenter argues that EPA cannot support this rule by reference to a long-standing policy that treats transboundary movement of certain PCB waste controlled by the U.S. Government as neither import nor export. In the preamble to the proposed rule, EPA compared the interpretation of the term ''import'' proposed at § 761.99(c) to its view of the terms ''import'' and ''export'' under that prior policy. The policy provides that PCBs purchased or procured in the United States by the Federal government, taken overseas for use in U.S. Government facilities, and that have remained under the control and jurisdiction of the U.S. Government, may be subsequently returned to the United States for disposal in an approved facility without violating TSCA's bans on import and export of PCBs. EPA did not refer to this policy as the basis for the proposed revisions to § 761.99(c). This rule is based on EPA's interpretation of the undefined statutory term ''import'' for purposes of the definition of ''manufacture'' as used in TSCA section 6(e)(3). Rather, EPA referred to that policy, as well as the other provisions of 40 CFR § 761.99, to illustrate the point that not every movement of PCBs across the border of the customs territory constitutes an ''import'' *per se* for purposes of TSCA section 6(e)(3).

Finally, the commenter pointed out that EPA did not propose to amend its regulatory definition of ''manufacture.'' That term is defined in 40 CFR 761.3 to mean ''to produce, manufacture, or import into the *customs territory* of the United States [emphasis added].'' The commenter pointed out that, under this definition, it is not unlawful to import PCBs from a foreign country into a territory or possession outside the customs territory of the United States. For example, PCB waste could still lawfully move from Japan to Guam. The commenter suggested EPA amend this definition by deleting the words ''customs territory of.'' This would bar import of PCBs into any territory or possession of the United States, and would effectuate EPA's stated goal that ''the prohibitions and restrictions of PCBs under TSCA section 6(e) and its implementing regulations protect not only U.S. citizens in the 50 States, but U.S. citizens in all the territories and possessions of the United States,'' (65 FR 65656). Moreover, the commenter opined that this change would prevent the territories and possessions from becoming a conduit of PCB waste from foreign countries to disposal facilities on the U.S. mainland.

This rule does not allow the territories and possessions to become a conduit to disposal facilities in the U.S. mainland for PCB waste generated in foreign countries. This rule allows PCBs that have been in the United States since January 1, 1979, including PCB waste in areas outside the customs territory of the United States, to be moved to the U.S. mainland for disposal. The rule does not apply to PCBs that arrived in the United States after that. The commenter is correct that, under the current definition of ''manufacture,'' it is not unlawful for foreign PCBs to enter territories and possessions outside the customs territory of the United States. However, the rule does not allow PCBs in the U.S. territories and possessions that entered those areas after January 1, 1979, to be transported to the U.S. mainland for disposal. The territories and possessions therefore cannot become a conduit of PCB waste from foreign countries to disposal facilities on the U.S. mainland.

EPA has not adopted the commenter's suggestion to amend the regulatory definition of ''manufacture.'' First, the regulatory definition of ''manufacture'' at 40 CFR 761.3 mirrors the statutory definition in TSCA section 3(7). Because the statutory definition would remain intact, amending the regulatory definition would not have the effect the commenter anticipates. In addition, the result the commenter seeks by the amendment is outside the scope of the proposed rule. The rule as proposed would not have prevented foreign PCBs from entering areas of the United States that are outside the customs territory, and was not intended to.

2. *Risks posed by transportation of PCB waste.* A commenter expressed concern about the risks to health and the environment of transporting PCB waste from the territories and possessions to the U.S. mainland for disposal (C1–012 and C1–014). The commenter cited U.S. Department of Transportation (DOT) data on highway incidents involving PCBs and other hazardous materials that resulted in death, injury, or property damage. The commenter also pointed out the risk of accidents during transoceanic shipments of PCB waste. The commenter suggested that disposal technology be transported to the waste, rather than transporting the waste to the disposal site. (See EPA's response to this comment in Unit III.B.3. below.)

PCBs (both liquid and solid) are subject to DOT regulations that apply to transport of hazardous materials. The Hazardous Materials Regulations (HMR), 49 CFR parts 171 through 180, apply to materials, or groups or classes of materials, that the Secretary of Transportation has determined may pose an unreasonable risk to health and safety or property when transported in commerce in a particular amount and form. The HMR are issued for the safe transportation of these materials in interstate, intrastate, and foreign commerce by aircraft, railcars, vessels, and any motor vehicles. The HMR address hazard communication, packaging requirements, operational rules, and training. These rules already apply to transoceanic shipment of PCBs between areas inside the customs territory but not in the mainland United States and disposal facilities on the mainland. EPA's intent for this rule is to put citizens in the territories and possessions in the same regulatory position as citizens in Hawaii or Puerto

Rico with respect to disposal of PCBs. To the extent the commenter has concerns about the adequacy of those other rules, such concerns are outside the scope of this rulemaking.

As the commenter points out, incidents involving transportation of PCBs and other hazardous materials do occur. Therefore, transporters of PCBs must be familiar with the HMR as they apply to PCBs, and are legally obligated to comply with those provisions as applicable. Compliance with the HMR is the best way to prevent transportation incidents to the greatest extent practicable. Additional information, including information on enforcement and training, is available at *http://hazmat.dot.gov/*.

The commenter was particularly concerned about a tanker spill of PCBs and the effect such a spill would have in biologically rich coastal waters, or near areas of high human population, croplands, water supplies, critical wildlife habitat, ports, or fisheries. Although a comprehensive inventory of the PCB waste in the territories and possessions is not available, information developed by EPA Region IX did not identify any appreciable quantities of liquid PCB waste that would be likely to be disposed of in U.S. mainland facilities. The PCB waste Region IX identified is made up of approximately 10,000 cubic yards of soil, 13 transformers (one estimated to contain up to 310 gallons of liquid PCBs), one 55–gallon drum of personal protective equipment, 800 fluorescent lamp ballasts packed in four 55–gallon drums, and 41 drums of sludge and soil from leaking transformers (Ref. 8). Therefore, EPA believes it is unlikely that any territory or possession would ever generate enough liquid PCB waste to fill a tanker ship bound for the mainland United States. As noted above, transporters of PCBs must be familiar with the HMR as they apply to PCBs, and are legally obligated to comply with those provisions as applicable.

3. *Risks posed by disposal of PCB waste*. The commenter also opposed the proposed rule on the ground that facilities that treat and dispose of PCBs have records of spills, environmental violations, and imposed penalties, and pose risks to health and the environment that are ''not negligible'' (C1–012 and C1–014). The commenter also noted that dioxin-like products of incomplete combustion can form from unburned PCBs released during incineration. These products of incomplete combustion can become widely dispersed in the environment and can bioaccumulate in the food chain. The commenter pointed out that innovative, alternative technologies are available as alternatives to incineration. The commenter suggested that these innovative, alternative technologies be used to treat the waste on-site in the territories and possessions, rather than sending the waste to the mainland United States for incineration.

PCB waste covered by this rule must be managed in accordance with the disposal regulations at 40 CFR part 761, which were promulgated under TSCA's no unreasonable risk standard. These regulations allow disposal of PCB waste in TSCA-approved incinerators (see § 761.70). As part of its approval process for PCB incinerators, EPA conducts a technical assessment of the facility's technology and procedures to ensure that operation of the facility will not present an unreasonable risk of injury to health or the environment. EPA's technical assessment establishes limits on the PCB concentration of the waste the facility may dispose of, and on the waste feedrate per hour, based on a demonstration test. The operating conditions of the approval are set so that they do not exceed the values established in the technical assessment. The approval also requires the facility to meet the regulatory standards set out in 40 CFR part 761, subpart D as to destruction and removal efficiency and PCB concentration of the facility's waste products.

However, thermal destruction is not the only disposal option available under EPA's regulations. Depending on the form of the waste and its PCB concentration, other disposal options include TSCA-approved landfills (see § 761.75), decontamination (§ 761.79), and disposal in certain landfills permitted in accordance with the Resource Conservation and Recovery Act (RCRA) (see § 761.61(a) and § 761.62(a) and (b)). In addition, the PCB regulations allow EPA Regional Administrators to grant risk-based approvals for alternative disposal and decontamination methods under § 761.60(e), § 761.61(c), § 761.62(c), and § 761.79(h). In 1994, the last year for which data have been compiled, 842,584,000 kilograms of PCB waste were disposed of in the United States using all technologies available at that time (Ref. 22).

EPA supports the commenter's suggestion that generators and disposers of PCB waste now located in the territories and possessions examine innovative, alternative disposal technologies. Some of these technologies are commercially available and may offer further risk reductions over mainland disposal in an incinerator or TSCA landfill. EPA recently released a report reviewing several of these alternative technologies, ''Potential Applicability of Assembled Chemical Weapons Assessment Technologies to RCRA Waste Streams and Contaminated Media,'' August 2000. This report is available from EPA's web site at *www.epa.gov/tio* or at *www.clu-in.org.*, or from EPA's National Service Center for Environmental Publications, (800) 490–9198. Information about these innovative, alternative technologies, including mobile technologies that can be taken to the locations where PCB wastes are stored, is also available to local government officials and members of the public through Regional PCB Coordinators. Anyone intending to dispose of PCBs using an alternative technology must confirm that it is consistent with EPA's regulations, and that a TSCA PCB disposal approval has been issued that is specific to the waste and technology that will be used.

EPA acknowledges that, because PCBs are toxic, there are risks associated with managing them that cannot be completely prevented. Accidents can occur during storage and disposal, as can lapses in compliance. This is true of conventional disposal technologies as well as of innovative, alternative technologies. EPA's PCB regulations and facility-specific approvals provide regulatory and enforcement structures for reducing the risks inherent in managing and disposing of PCBs. Moreover, it is long-standing EPA policy that the benefits of permanently removing PCBs from the environment through proper disposal outweigh the risks of the disposal processes themselves (see EPA's Import for Disposal Rule, 61 FR 11096, 11098 (March 18, 1996) (FRL–5354–8)). These benefits may be greater with regard to the territories and possessions, where facilities for proper management and disposal are more limited than on the U.S. mainland, and the risks of release to the environment are greater. As noted above, EPA's intent for this rule is to put citizens in the territories and possessions in the same regulatory position as citizens in Hawaii or Puerto Rico with respect to disposal of PCBs. To the extent the commenter has concerns about the adequacy of the PCB disposal regulations, such concerns are outside the scope of this rulemaking.

4. *Environmental justice concerns*. A commenter questioned EPA's conclusion in the preamble to the proposal that this rule presents no environmental justice concerns, and that it will reduce risks to health and the environment from PCBs (C1–012 and C1–014). The commenter believed

EPA had disregarded the environmental risks that low-income and minority communities in the territories may face due to transportation of PCB wastes. The commenter also believed EPA's conclusion ignored increased exposure to PCBs and attendant health risks that will be borne by low-income and minority communities surrounding the treatment and disposal facilities in the United States where the wastes will be sent.

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Communities* (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 final rule will reduce the risk to human health and the environment from exposure to PCBs in low-income and minority communities in the U.S. territories and possessions located outside of the customs territory of the United States because it will allow PCB waste found there to be disposed of in EPA-approved facilities on the mainland of the United States.

Executive Order 12898 directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions. . .'' EPA's judgment at the time of the proposed rule was that the rule would benefit low-income and minority populations in the territories and possessions because it would allow PCB waste to be removed from those areas for permanent disposal. Comments from the territories and possessions support that judgment.

The Resident Representative to the United States from the Commonwealth of the Northern Mariana Islands supported the proposed rule (C1–009). The commenter noted the risks to residents of the village of Tanapag from soil contaminated by abandoned PCB capacitors. As discussed in Unit III.A., members of the village community have been verified by the ATSDR to have excess body loads of PCBs. EPA is currently evaluating the degree of contamination of ground water and food sources used by the village. An attempted remediation of the contaminated soil using thermal desorption has not been completed, and contaminated soils are stockpiled within the village, exposed to sun and rain. The commenter also noted the difficulty of managing hazardous waste on a small tropical island with limited land resources, a single source of drinking water, and frequent tropical storms, earthquakes, and volcanos. The commenter further observed that economic factors for the islands are problematic. The island may be exposed to a variety of toxic wastes due to global commerce, requiring a multitude of disposal technologies, but for a small quantity of each type of waste. Thus, economies of scale in establishing and operating disposal facilities are lacking. Furthermore, the subsistence economies on which some island people rely are put at risk by contamination, and replacement sources of food may be unavailable or unaffordable. The commenter concluded, ''Shipment of PCB wastes from the U.S. territories to the U.S. customs territory is not without risk; but the alternative of leaving the wastes where they are has proven to have results inconsistent with the goals of our national policy of protecting the environment and human populations from exposure to PCBs.'' EPA has issued an Order under RCRA to the Army Corps of Engineers to clean up the Tanapag Village contamination.

The Chairperson of the Committee on Natural Resources of the Senate of Guam also wrote in favor of the proposed rule (C1–007). The senator pointed out that Guam is a small island, prone to natural disasters such as typhoons and earthquakes. The senator also noted that the island's growing population and limited land area will make it difficult if not impossible to designate any part of the island for hazardous waste disposal. The population of Guam is becoming more concerned about the health and environmental effects PCBs may have on the people and the island. A current case on Guam involves PCBs that leaked into the largest wetland on Guam from a Navy power plant. The Navy is currently assessing the effect PCBs may have on the aquatic life in the wetland, such as catfish, and the fruits and vegetables that have been farmed in the area and consumed by island residents for many years. A number of residents in the local village are concerned that adverse health effects such as cancer may have occurred because of living next to the power plant or consuming food that was produced in the area. The senator concluded:

> To insure the health and welfare of our island residents, it is in the interest of the island to insure that toxins such as PCBs that have been brought into Guam from U.S. destinations be returned for proper disposal. The U.S. territories, such as Guam, should not be unfairly burdened by restrictions that allowed for the transportation of such a toxin from the United States to Guam, but limits the return to the U.S. mainland from Guam for proper disposal. Our islands and our limited land resources and extenuating environmental conditions should be given fair consideration in addressing USEPA's proposed rule for proper disposal facilities in the U.S. mainland.

The Administrator of the Guam Environmental Protection Agency commented that PCBs from several cleanups are in indefinite storage on Guam (C1–008). These storage areas are subject to damage by frequent typhoons and earthquakes. PCBs that are released can present an exposure risk to Guam residents through consumption of contaminated fish, which is a subsistence food for Guam residents. Even a small amount seeping into the groundwater could eliminate Guam's sole aquifer as a source of drinking water. The commenter stated that the proposed rule would remove a tremendous burden on Guam and ensure that a safe and viable mechanism existed for the protection of health and the environment for residents on Guam where disposal facilities are not available.

A Member of Congress from Guam supported the proposed rule, commenting that it would help to eliminate the threat to the health and welfare of Guam and other U.S. territories communities from PCB waste (C1–002). A Member of Congress from American Samoa commented that the proposed rule was a common sense solution to the problem of storage of PCBs in the territories, noting that hurricanes, typhoons, and earthquakes in the territories can spread PCBs throughout the local environments on which humans, animals, and plant life depend (C1–003).

Finally, a long-term resident of Guam who is also an environmental professional engaged in environmental consulting services on Guam and in the Commonwealth of the Northern Mariana Islands supported the proposed rule and commented that EPA's prior policy of prohibiting PCBs in the territories and possessions from being shipped to an EPA-approved disposal site was not protective of health and the environment (C1–001).

EPA believes that the interpretation in this final rule will result in reduced risk to health and the environment from exposure to PCBs in low-income and minority communities in the U.S. territories and possessions. This rule will allow most PCB waste found in those territories and possessions to be disposed of in EPA-approved facilities on the mainland of the United States.

While the rule could result in some short-term risk from transportation of the waste, EPA believes that that risk is outweighed by the elimination of the health and environmental concerns in the U.S. territories and possessions over the long term that would be posed by continued storage of the waste.

The commenter also asserted that the rule would adversely affect low-income and minority populations who live near the disposal facilities in the United States where the waste would be disposed of by incineration (C1–012). As part of its approval process for PCB incinerators, EPA conducts a technical assessment of the facility's technology and procedures to ensure that operation of the facility will not present an unreasonable risk of injury to health or the environment. EPA's technical assessment establishes limits on the PCB concentration of the waste the facility may dispose of, and on the waste feedrate per hour, based on a demonstration test. The operating conditions of the approval are set so that they do not exceed the values established in the technical assessment. The approval also requires the facility to meet the regulatory standards set out in 40 CFR part 761, subpart D as to destruction and removal efficiency and PCB concentration of the facility's waste products. EPA conducts a similar analysis when permitting other types of PCB disposal facilities, as well, and determines that activities at the facility will not pose an unreasonable risk of injury to health or the environment. Additionally, the approval process for PCB disposal facilities is subject to E.O. 12898. Therefore, EPA is also required to consider the potential impacts of that action on the environmental and health conditions in low-income and minority communities whenever a permit is approved.

Therefore, as long as PCB waste from the U.S. territories and possessions is disposed of in accordance with a facility's approval, disposal of the waste will not produce risks greater than those calculated at the time the PCB disposal approval was issued, which EPA determined will not pose an unreasonable risk to the surrounding community. Disposal facilities permitted under TSCA must renew their permits periodically. The permit renewal process is open to public participation. Issues on siting of facilities, including environmental justice issues, can be raised as part of that process, and will be considered by EPA. As noted above, EPA's intent for this rule is to put citizens in the territories and possessions in the same regulatory position as citizens in Hawaii or Puerto Rico with respect to disposal of PCBs. To the extent the commenter has concerns about the adequacy of EPA's approval of specific PCB disposal facilities under TSCA, such concerns are outside the scope of this rulemaking, and can be addressed in the renewal process for those facilitlies' permits.

5. *Non-cancer health effects of PCBs*. A commenter questioned the basis for the statement in the preamble to the proposed rule that ''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'' (C1–011) (see 65 FR 65655, November 1, 2000)(FRL–6750–6). The commenter noted that the only reference for the statement was a report by EPA's Office of Research and Development, ''PCB Cancer Dose-Response Assessment and Application to Environmental Mixtures'' (Ref. 1). The commenter pointed out that that report addressed the carcinogenicity of PCBs, not their non-cancer or ecological effects, and that EPA's Office of Research and Development is in the process of reassessing the non-cancer effects of PCBs. The commenter referred to a literature review it has conducted on non-cancer effects of PCBs, which was submitted for the Agency's consideration as part of EPA's reassessment of the effects of dioxin and related compounds (including co-planar PCBs) (see 65 FR 59186, October 4, 2000) (FRL–6880–9). The literature review concludes that, except for certain oculodermal effects, PCBs do not contribute to adverse health effects in humans.

EPA appreciates the commenter's contribution to the ongoing efforts elsewhere in the Agency to assess the health effects of PCBs. However, the preamble statement the commenter questions was included for background only, as this rule is not based on an assessment of the risks of PCBs. This rule clarifies EPA's 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. As a result, the Agency has not made a formal finding of ''no unreasonable risk'' for this regulation as would be required for a regulation that is issued under section 6(e) of TSCA. This regulation codifies 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. All PCB wastes affected by this rule are subject to the current regulations at 40 CFR part 761, which were promulgated based on the standard of no unreasonable risk.

C. What Other Comments Were Received on the Proposed Rule?

The Agency also received comments that raised additional issues.

1. *Broaden the scope of the rule*. EPA received a request (C1–004) to broaden the scope of the proposed rule to include both domestic- and foreign-manufactured PCBs that have remained under the control of the U.S. Government. The Agency was also asked to consider submitted comments (C1–005) as a petition for an exemption from the TSCA prohibitions to allow the import for disposal of U.S.-manufactured PCBs that are located within the Western Hemisphere. (An exemption petition requires Agency action in the form of a separate rulemaking.) EPA cannot act favorably on either of these requests since they clearly fall outside of the scope of the proposed rule.

The proposal was issued as an interpretive rule rather than a TSCA section 6(e) action; therefore, a formal finding of ''no unreasonable risk'' is not necessary. The legal basis for the proposed interpretive rule was that PCBs which were legally present anywhere in the United States when the ban took effect in 1979 should not be considered ''imported'' when they are moved to another place in the United States, regardless of whether the PCBs leave or enter the customs territory of the United States. EPA believes that ''import'' in this context applies to the initial introduction of particular PCBs into the United States (and the jurisdiction of TSCA), not to the movement across the border of the customs territory of previously manufactured PCBs that have never left the regulatory jurisdiction of TSCA. Therefore, foreign-manufactured PCBs and U.S.-manufactured PCBs that have been exported do not fit within the narrowly crafted interpretation of the proposed rule. An exemption remains a viable alternative for seeking Agency approval to import for disposal either foreign-made PCBs or domestic-made PCBs that have been exported from the United States. The appropriate means of obtaining a response from the Agency on those requests is to submit an exemption petition pursuant to section 6(e)(3) of TSCA, following the procedures at 40 CFR 750.10. Exemptions may be granted for a period not to exceed 1 year, but only after the petitioner has demonstrated that the two statutory requirements have been met (i.e., there will be no unreasonable risk

of injury associated with the requested activity, and that good-faith efforts have been made to find a substitute for the PCBs). Neither set of comments provided the level of detailed information that is necessary for the Administrator to act on a request for an exemption from the TSCA prohibitions.

2. *Treatment of post-January 1, 1979 wastes*. EPA also received two inquiries regarding the applicability of the interpretive rule to post–1979 PCB wastes. One set of comments (C1–008) raised a concern that the proposed rule would not allow PCB wastes which arrived in U.S. territories after January 1, 1979, to be disposed of on the U.S. mainland. Another commenter (C1–011) expressed a similar opinion and indicated there may be difficulty in demonstrating that PCBs were present in a U.S. territory or possession prior to January 1, 1979. The suggested solution was to allow importation for disposal of PCBs present in a territory or possession on the ''effective date of the proposed rule.''

These commenters apparently misunderstood the proposed rule. As discussed in the preamble to the proposed rule, in order to qualify for this regulation, the PCBs in the waste in question must have been present in the United States prior to 1979, not present in the territory or possession where they are now prior to that date (65 FR 65657). So long as the PCBs were lawfully manufactured in or imported into the United States prior to 1979, and never left the United States, the date on which they entered the territory or possession in question is irrelevant.

Wastes that are covered by this rule may be sent to the U.S. mainland for disposal in accordance with the PCB disposal regulations. Any other PCB waste may not be imported to the U.S. mainland for disposal, unless an exemption under section 6(e)(3) of TSCA has been obtained. Similarly, foreign PCB waste in a U.S. territory or possession may be exported to another country for disposal only when the TSCA exemption requirements, and all requirements of any relevant international agreement, have been satisfied.

With respect to changing the date on which PCBs must have been in the United States in order to qualify for this regulation, EPA does not agree that using the date of the proposed rule would be appropriate. Part of the basis for this interpretive rule is that PCBs that are present in the United States when the ban on manufacturing went into effect and have remained in the United States since then should be managed in the same manner regardless of whether they are now present in a territory or possession, rather than within the customs territory of the United States. Therefore, using a threshold date other than January 1, 1979, would not be supported by the rationale for the proposed rule.

D. What Does this Final Rule Do?

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* U.S. 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 U.S. 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 U.S. citizens of these areas are subject to a higher likelihood of exposure to PCBs, and thus potential for a higher risk of injury.

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 use of the term ''import '' in the definition of ''manufacture'' 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 substance into the customs territory of the United States from a foreign country. This latter category results in the introduction of a substance in the United States that was not there before, and is much more analogous to the manufacture of a new chemical substance in the United States. Therefore, EPA is interpreting the movement of certain PCB waste from the territories and possessions into the customs territory of the United States for disposal not to be a ''manufacture'' subject to the ban set forth in TSCA section 6(e).

This interpretive rule allows 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 time. This rule will 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 also allows 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, this interpretive rule allows 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 does not consider movement of any of these wastes to the customs territory of the United States to be ''manufacture'' as that term is defined in TSCA and therefore does not consider it subject to the ban on manufacturing under TSCA section 6(e).

This final rule applies to PCB waste in the territories and possessions provided that the PCBs in the waste are there 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 have been subject to regulation under TSCA since that time. This would include 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 final rule does 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 rule

is to ensure that all U.S. PCB waste can be disposed of in compliance with the requirements of TSCA section 6(e) and its implementing regulations. This final rule does not 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 regulation. This regulation is not being promulgated under TSCA section 6(e), but rather as an exercise of EPA's inherent authority to interpret the statutes it administers.

VIII. 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–66020A, 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.'' OPTS 62008.

3. USEPA. 59 FR 62788, December 6, 1994, ''Disposal of Polychorinated 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 for 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 U.S. 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.

22. USEPA, OPPT. PCB Disposal and Storage Statistics, 1990–1994 (May 10, 1996): 11 pp.

IX. 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 final 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 the expiration of PCB equipment that 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 final 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 United States 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 and 13175

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 United States 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.

On November 6, 2000, the President issued Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249). Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 as of that date. EPA developed this rule, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084.

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 interpretation in this final rule will reduce the risk to human health and the environment from exposure to PCBs in low-income and minority communities in the territories and possessions. This rule allows PCB waste found in U.S. territories and possessions located outside of the customs territory of the United States 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 regulation would allow PCB waste in U.S. territories and possessions located outside of the customs territory of the United States 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).

X. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, 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).

List of Subjects in 40 CFR Part 761

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

Dated: March 20, 2001.

Christine T. Whitman,

Administrator.

Therefore, 40 CFR chapter I, part 761 is 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.

[FR Doc. 01–7920 Filed 3–29–01; 8:45 a.m.]

BILLING CODE 6560–50–S