

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 9 and 761**

[OPPTS-66009B; FRL-5354-8]

RIN 2070-AC01

**Disposal of Polychlorinated Biphenyls; Import for Disposal**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** On December 6, 1994, EPA proposed to allow the import and export of Polychlorinated Biphenyls (PCBs) for disposal at concentrations of 50 parts per million (ppm) or greater under certain circumstances. This final rule promulgates regulations at 40 CFR part 761, subpart F to permit the import of PCBs for disposal at concentrations of 50 ppm or greater. Today's rule continues to allow the import and export of PCBs for disposal at concentrations less than 50 ppm. Those portions of the December 6, 1994, proposed rule addressing other issues, including export of PCBs for disposal at concentrations of 50 ppm or greater and other transboundary shipments of PCB waste, will be addressed in a separate Federal Register notice at a later date. This rule will provide for the sensible management of PCB waste imports, consistent with hazardous waste import regulations, and the United States' obligations under international agreements. This rule will benefit the United States by facilitating the safe removal of PCBs from areas near the United States' borders, as well as the world environment in general, and this rule will produce economic benefits for the United States.

**DATES:** In accordance with 40 CFR 23.5, this rule is promulgated for purposes of judicial review at 1 p.m. eastern standard time on March 18, 1996. Because this final rule relieves a regulatory restriction, under section 553(d) of the Administrative Procedures Act (APA), this final rule is also effective on March 18, 1996.

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**SUPPLEMENTARY INFORMATION:****I. Overview of Rulemaking****A. Purpose of this Final Rule**

In the Federal Register of December 6, 1994 (59 FR 62788), EPA issued a notice of proposed rulemaking to amend the polychlorinated biphenyl (PCB) rules at 40 CFR part 761, promulgated under section 6(e) of the Toxic Substances Control Act (TSCA). Comprehensive changes were proposed for the PCB regulations which included, among other things, the requirements for determining PCB concentration; marking, storage and disposal; decontamination levels and procedures; reporting and recordkeeping requirements; and use authorizations. In addition, EPA proposed to allow the import and export of PCBs for disposal at concentrations of 50 ppm or greater under certain circumstances. Comments were specifically solicited on retaining the prohibitions on transboundary shipments of PCB waste for purposes of disposal, on removing the prohibitions, and on specific regulatory language proposed at § 761.20(b) and (c) that would allow import and export of PCB waste under certain circumstances with appropriate administrative controls (see 59 FR 62816-62818).

On June 6 and 7, 1995, EPA held a public hearing on the proposed PCB Disposal Amendments, including the proposed import provision, in Arlington, Virginia. A transcript of that hearing was placed in the public record.

In response to considerable public interest in the proposal to allow importation of PCBs for disposal, EPA has expedited its final action on the portion of the PCB Disposal Amendments addressing import, and is promulgating these provisions in today's final rule. The other regulatory changes proposed in the PCB Disposal Amendments, including those relating to export for disposal at concentrations of 50 ppm or greater and other transboundary shipments of PCB waste, will be addressed in a separate Federal Register notice at a later date.

**B. Statutory Authority**

This final rule is issued pursuant to section 6(e)(1) of TSCA. Section 6(e)(1) of TSCA gives EPA the authority to promulgate rules to prescribe methods for the disposal of PCBs (15 U.S.C. 2605(e)(1)).

When EPA adopted a year-long open border policy in 1979, it explained that, while the Agency has concurrent authority to regulate import of PCB waste for disposal under both section 6(e)(1) and section 6(e)(3), it was doing so under the authority of section 6(e)(1):

In [establishing the open border policy], EPA has reviewed whether the regulation of imported and exported PCB wastes for disposal should be accomplished under section 6(e)(1) of TSCA or under section 6(e)(3). While section 6(e)(3)(A)(i) could be read to allow regulation of the import of PCB wastes for disposal, section 6(e) treats PCB disposal as a separate matter under section 6(e)(1), which allows comprehensive regulation of the disposal of PCBs. Accordingly, EPA has elected to regulate import and export of PCB waste for disposal under section 6(e)(1). (44 FR 31514-31516; May 31, 1979.)

After the border was closed in 1980, EPA relied on its authority under section 6(e)(3) in accepting and considering exemption petitions for specific transboundary shipments of PCB waste at concentrations of 50 ppm or greater. Such exemptions were rarely granted.

Under its section 6(e)(1) authority, EPA is implementing in this rule a broad-based approach to import for disposal that EPA believes carries out Congress' intent that EPA take action to prevent unreasonable risks of injury to health and the environment in the United States from PCBs.

Under section 6(e)(1) EPA has promulgated a series of disposal regulations which support a consistent course of action to promptly dispose of regulated PCBs in a manner which limits releases to the environment to the best levels achievable by technology at the time the regulations were promulgated. Section 761.65 requires disposal of PCBs within 1 year of the time the PCBs are designated a waste. Part 761, subpart D prescribes standards which are used for issuing disposal approvals. EPA believes that PCB wastes which are not disposed of for extended periods of time or which are not disposed of in facilities providing equivalent protection from release to the environment may pose an unreasonable risk of injury to health and the environment. Therefore, EPA believes today's rule which allows foreign generated PCB wastes to be disposed of in a prompt and safe manner in the United States is consistent with the requirements it has promulgated for storage and disposal of domestically generated PCB wastes. Under TSCA section 6(e), EPA makes decisions using the concept of "unreasonable risk." This includes the consideration of the risks of harm to health or the environment in the United States and of the costs of regulation in the United States. EPA does not consider risks that occur outside the United States except to the extent those risks may result in risks in the United States, and EPA does not consider costs of regulation to parties

outside the United States. Thus EPA's analysis for this rulemaking does not consider impacts of the rule that take place outside the United States.

Because EPA is promulgating this rule to allow import for disposal under its section 6(e)(1) authority, it is no longer necessary for persons who wish to import PCBs for disposal in accordance with this rule to apply for case-by-case exemptions under section 6(e)(3). However, to the extent that persons wish to engage in import activity outside the scope of this rule (i.e., an activity other than importing PCB waste for disposal), section 6(e)(3) petitions may still be filed with the Agency.

### *C. Coordination with International Agreements*

On May 5, 1992, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention) entered into force. The Basel Convention imposes a series of obligations on Parties regarding transboundary shipments of hazardous waste. One provision of the Convention of significance to the implementation of today's rule is that Basel Parties are prohibited from exporting or importing wastes that fall within the scope of the Convention to or from non-Parties unless a separate agreement or arrangement exists with non-Parties regarding transboundary shipments of such wastes. (For a more detailed explanation of the Basel Convention, the content and role of these separate agreements and the text of the Convention, please see the Federal Register of May 13, 1992 (57 FR 20602).)

On March 21, 1990, the United States signed the Basel Convention. Signature indicates that the United States will not take action that would defeat the object and purpose of the Basel Convention. However, the United States has not yet ratified the Basel Convention. Since the United States is not a Party to the Convention, Parties to the Convention may not trade in Basel-covered wastes with the United States absent a separate bi- or multi-lateral agreement or arrangement between the concerned governments covering such wastes (e.g., PCB waste) that meets the conditions specified in Article 11 of the Basel Convention. The lack of such an agreement or arrangement could prevent the export of PCB waste from a Basel Party to the United States for disposal.

Nothing in today's rule alters the existing authority of the United States to prohibit an import where the import is not in compliance with an agreement or arrangement that the United States has entered into regarding PCB waste

imports; or where the import is not in compliance with other international obligations of the United States.

### *D. Coordination with Other EPA Regulations*

Section 9(b) of TSCA mandates EPA to "...coordinate actions taken under this Act with actions taken under other Federal laws. . . ." EPA believes that today's final rule has the advantage over the proposed rule and the current "Closed Border Policy" of making the regulation of importation of PCBs for disposal more consistent with the regulations on the importation of hazardous wastes under the Resource Conservation and Recovery Act (RCRA), 40 U.S.C. 6901 et seq. Currently, under RCRA, EPA generally does not restrict the importation of hazardous wastes from abroad for disposal at permitted facilities in the United States, apart from certain controls adopted pursuant to relevant international instruments, such as the U.S.-Canadian Agreement Concerning the Transboundary Movement of Hazardous Waste. EPA believes that without appropriate controls, the importation of PCBs for disposal could pose unreasonable risks to human health and the environment in the United States. Therefore, EPA believes that it is in the public interest to regulate the importation of PCBs for disposal.

The need to make a determination of no unreasonable risk under TSCA mitigates against an unrestricted open border policy for PCBs. Therefore, today's rule will allow for importation of PCB wastes with minimal disruption, including PCB-containing hazardous wastes that formerly were barred from entry into the United States. For the reasons explained below in Unit I.E., EPA determines that, with proper control, including prior notification, tracking, and storage and disposal in approved facilities, a less restrictive policy concerning the import of PCBs for disposal, which is more consistent with the program for hazardous wastes under RCRA, will not present an unreasonable risk of injury to health or the environment.

In addition to compliance with the TSCA PCB regulations at 40 CFR part 761, importers should be aware that other requirements may also apply to imports of PCBs. For instance, importers must provide a TSCA Section 13 Importer's Certification to U.S. Customs in accordance with 40 CFR part 707, subpart B. Further, all parties should be aware that imported PCB waste may be subject to regulation under RCRA Subtitle C as a hazardous waste, unless it satisfies the RCRA exemption set forth

in 40 CFR 261.8 or another applicable exemption. Section 261.8 exempts generally from RCRA Subtitle C regulations the disposal of certain PCB-containing dielectric fluid and electrical equipment containing such fluid authorized for use under 40 CFR part 761. EPA believes this RCRA exemption should apply to the disposal of PCB waste that meets the criteria of § 261.8 regardless of whether the dielectric fluid or electrical equipment containing this fluid originated domestically or abroad. (These fluids and equipment may not be imported for use, but may be imported for disposal.) There is no reason to treat these imported fluids and equipment differently from their domestic counterparts for purposes of this disposal exemption and § 261.8 was not intended to result in different treatment of the same type of materials. However, if imported PCB waste meets the RCRA definition of a hazardous waste and fails to meet the § 261.8 exemption, then it will have to be handled in compliance with all applicable RCRA regulations (as is the case with domestic PCB waste).

Nothing in this rule affects or obviates obligations affecting PCBs under other laws or regulations. The importer, and the owner or operator of each storage and disposal facility managing imported PCBs for disposal are responsible for determining and complying with all other applicable Federal, State and local laws and regulations pertaining to the management of this material.

### *E. Unreasonable Risk Finding*

In this final rule, EPA is not implementing the proposed import notice provision that would have required importers to justify, on an individual shipment basis, how importing PCB waste for disposal would be in the interests of the United States. Based on additional data supplied by commenters, in particular comments demonstrating the very low risks associated with regulated transportation, EPA has determined that the risk associated with the import for disposal of PCBs would be insignificant under the circumstances outlined in this rule, and these insignificant risks are outweighed by significant benefits. Provided import of PCBs for disposal is conducted under the circumstances outlined in this final rule, including notification of the Agency, EPA finds that such import will not present an unreasonable risk of injury to health or the environment in the United States. This is because in the United States all PCBs imported for disposal are subject to U.S. Department of Transportation regulations for hazardous materials during transport, and must be

manifested, stored, and disposed of only in facilities with PCB storage and disposal approvals, or laboratories handling limited quantities. The United States will realize significant benefits from this rule, including the amelioration of the risks posed to the United States by the presence of PCBs in the world environment. United States industry stands to gain an economic benefit of \$50 - \$100 million annually from PCB waste imports, and additional jobs may be created.

EPA received substantial written and oral comments in response to the proposed PCB Disposal Amendments and the proposed PCB Exemptions Rule (59 FR 62875, December 6, 1994) on the risk of transportation for disposal. Most commenters addressing the transportation issue argued that the risks involved in transportation for disposal are negligible. The American Trucking Association's (ATA) comments included a review of the Department of Transportation's (DOT) statistics, and found that only one "serious incident" involving PCB transport occurred in the period from January 1, 1990 to November 15, 1994. (During that period, a "serious incident" was defined by DOT to be an accident or derailment, an evacuation, a death, an injury requiring hospitalization or lost work time, or a road closing. (comment C1-047).) For comparison, 1,923 serious incidents involving hazardous wastes occurred from January 1, 1990 to December 31, 1995, and during that same period, 16,074 serious incidents involving all hazardous materials (including wastes) occurred. Also, during that time, 14 serious incidents involving Class 7 radioactive material occurred. ATA estimates that upwards of 500,000 shipments of hazardous materials and 5,000 shipments of hazardous wastes are made daily.

The Environmental Technology Council (ETC) noted in its comments that over 200,000 tons of RCRA hazardous waste per year move across the U.S.- Canadian border, including pesticides and other chlorinated hydrocarbons with hazard profiles similar to PCBs. Comments supporting the safe shipment of PCBs for disposal were also provided by S.D. Myers, Inc. EPA Region IV, in a 1986 study, concluded that the risk associated with a PCB transportation spill would be slight (Ref. 5). Based on this data and analysis, EPA finds that the transportation of PCBs imported into the United States for disposal presents little risk of injury to health or the environment.

EPA also finds that the storage and disposal of imported PCBs at facilities approved under TSCA, as required by this rule, presents little risk of injury to health or the environment. In developing the disposal regulations at 40 CFR part 761, subpart D, EPA determined that the benefits of disposal (be that destruction, decontamination, or long-term containment) outweighed the risks associated with these processes, especially since EPA regulations require the use of the best available technology standards for destruction and long-term containment at approved facilities. As part of its approval process for PCB waste management facilities, EPA evaluates the technology and procedures of each facility to ensure its ability to meet these standards. These assessments presume a conservative scenario with regard to concentration of constituents and feed-rate. The operating conditions of the approval are set so that they do not exceed the values established in the technical assessment and during the demonstration test. Therefore, since each disposal approval establishes operating conditions based on waste characteristics demonstrated to the Agency as part of the approval process, disposing of foreign-generated PCB waste in U.S. disposal facilities will not increase the risks of disposal over and above the risks calculated at the time the PCB disposal approval was issued. In approving facilities under 40 CFR part 761, subpart D, EPA ensures that disposal facilities are designed and operated in accordance with the regulatory standards. While PCBs currently in storage or in the environment outside the United States pose less immediate risk of injury to health and the environment in the United States than PCBs in the United States today, they do pose some risk. EPA believes that the benefits of the removal of these PCBs outside the United States outweighs any risks associated with their disposal in TSCA-approved facilities.

The importation of PCBs for disposal could theoretically cause situations posing risks of injury by creating a shortage of disposal capacity for domestic PCB disposers, especially in the initial period of this change in policy. Theoretically, such a shortage could raise disposal prices enough to slow the removal of PCBs from service in the United States, or to encourage the improper disposal of PCBs, either of which might result in increased exposure to PCBs. While the import of PCB wastes may cause minor increases in disposal prices over the short-term,

EPA does not believe that import will cause a shortage of storage or disposal capacity. With certain exceptions, comments on this rule confirm that the U.S. PCB disposal companies have generally experienced an excess of capacity in recent years.

Furthermore, EPA believes the amounts of PCBs available for import are small in comparison to domestic generation, and pose little threat of swamping domestic disposal capacity. For instance, a recent report estimates there are 172,722 metric tons of PCB materials in Canada (Ref. 3). Mexico reportedly has 60,000 metric tons of PCB materials (Ref. 1). EPA believes all of this waste is unlikely to be imported into the United States, particularly not within a single year. For comparison, 842,050 tons of domestic PCB waste were disposed of at U.S. commercial facilities in 1993. Paradoxically, allowing import of PCBs could even stabilize disposal prices for U.S. PCB waste generators in the future, by ensuring that U.S. PCB disposal facilities continue to have an economically viable market, and continue to remain in the PCB waste disposal business.

Despite EPA confidence that import will not hinder United States generators from disposing of PCBs, as a safety measure, today's rule will provide a storage capacity cushion for domestic PCB waste. EPA is requiring owners of storage and disposal facilities accepting imported PCB waste to certify that no more than 70% of their facilities' approved and operating storage capacity is being used at any one time for imported PCB waste from all sources. This will ensure disposal firms handling imported waste cannot use all their resources for imported waste to the exclusion of domestic customers. Such a situation might increase risk by forcing domestic generators to store their waste for extended periods of time. The 70% capacity limit will facilitate compliance with the existing requirements for disposal of PCB waste within 1 year of removal from service (see § 761.65(b)) by ensuring adequate access to disposal capacity for domestic generators. This provision will expire after 3 years. Based on the above cited inventories of waste in Canada and Mexico, EPA estimates that this 3-year period will be sufficient to allow for any surge of waste imports generated by this new opportunity to dispose of PCB waste in the United States. After that time, EPA believes that the PCB disposal market will have compensated for any effects of additional foreign waste, and removal of this capacity provision will not deny domestic

generators access to disposal capacity or contribute to the need to store PCBs for more than 1 year.

EPA now concludes that to attempt to regulate individual import shipments of PCBs based on the risk those PCBs would pose to health or the environment in the United States if they were to remain in storage or use outside of the United States is impractical and inequitable. This conclusion is based on the lack of any established scientific methods in use to measure the relative risk of one cross-border exposure scenario with another. This issue is further complicated by the persistence of PCBs in the environment and their world-wide dispersal. For instance, research supporting EPA's report to Congress, *Deposition of Air Pollutants to the Great Waters* (EPA-453A/R-93-055, May, 1994), indicates that up to 89% of the current 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 U.S. facilities poses less risk of injury to health or the environment in the United States than the continued presence of PCBs in other countries, since proper disposal in this country provides protection against possible hazards from improper disposal elsewhere.

## II. Discussion of the Rule and Comments

### A. Background

Currently, EPA allows the import for disposal of PCBs only at concentrations less than 50 ppm. In response to periodic requests from individuals to import PCBs for disposal at higher concentrations, and to ensure that the PCB rules are not inconsistent with the conditions of the Basel Convention, EPA proposed in the PCB Disposal Amendments (59 FR 62788, December 6, 1994) to allow such imports under certain circumstances, in the belief that doing so would not pose an unreasonable risk of injury to health or the environment. EPA specifically proposed to create certain categorical exemptions to the general ban on import for disposal of PCBs at 50 ppm or greater. For PCB waste not included in these categorical exemptions, EPA proposed to establish a petition procedure to allow import on a case-by-case basis. EPA also proposed to clarify the status of certain transboundary shipments of PCBs which the Agency

does not consider import for purposes of these regulations. Outside of these excepted activities, the proposed rule retained the general prohibition on the import of PCBs for disposal at concentrations of 50 ppm or greater.

EPA also requested comment on the extent to which the U.S. border should be opened to transboundary shipments of PCBs for disposal, noting that the choices available for the final rule ranged from allowing all imports under section 6(e)(1) to maintaining the generally closed border status, and might include opening the border to PCBs from a limited geographical area such as the Great Lakes drainage basin (see 59 FR 62816).

### B. Summary of Comments

Oral and written comments in response to the proposed import provisions were submitted by approximately 32 separate parties. Comments are available for review in the docket to this final rule. EPA's response to these comments are summarized in a Response to Comments document, which is also available in the docket to this rule.

In general, comments submitted in writing and presented orally at the public hearing strongly supported opening the border as broadly as possible to imports of PCBs for disposal. The general sentiment of commenters was that the time was appropriate for a relaxation of EPA's 1980 "Closed border policy" (May 1, 1980, 45 FR 29115) on PCB wastes because the United States has the technology, capacity, and ability to dispose of PCB waste generated in other countries. Commenters generally supported allowing imports of wastes from foreign countries, with particular emphasis on PCB wastes coming from United States firms with foreign operations, and from Mexico and Canada. Many commenters opposed restricting imports to instances where "the interests of the United States" was narrowly interpreted to apply to PCBs in a narrow geographical area just outside the country's borders, where mismanagement of those wastes could pose an immediate risk of exposure and thus pose a risk of injury to health and the environment in the United States.

Little support was expressed for the actual process proposed by EPA. Generally, commenters indicated that the proposed petition and review mechanism was too burdensome and not likely to provide the relief intended. One commenter, American Trucking Association (C047), summarized this belief: "While such case-by-case review may not be a shipment-by-shipment review nor subject to notice-and-

comment rulemaking, the policy still provides inadequate relief. . . The petition process still creates market barriers between similarly qualified potential importers. . . EPA should. . . allow transborder movements of PCBs at least on a level no more restrictive than currently exists for hazardous waste." Several commenters suggested that at a minimum, EPA establish a deadline for response to petitions, and others recommended EPA grant petitions on a class basis for specific types of imports (i.e., allow only liquids, or recyclable metals, or waste from countries with no disposal capacity).

Even greater concern was expressed in comments about the actual criteria that EPA would use to review and rule on petitions to import waste as proposed. The absence of a description of the review process and the potential for inequity in EPA's decision-making process were noted as uncertainties that could negatively impact the U.S. disposal industry's planning process and hurt business competitiveness. Commenters indicated that if EPA retained the review process in the final rule, it should elaborate on the time frame for a decision and the actual standards it would use in accepting or rejecting petitions to import PCB waste (e.g., how EPA intends to determine whether an import is in the interests of the United States). Preference was expressed for the replacement of the proposed petition process with a codified list of conditions on import, allowing unrestricted import for disposal within the bounds of those conditions, with no notification to EPA.

Not all commenters supported the general proposal to open the border to PCB wastes at concentrations of 50 ppm and above. One commenter expressed concern that allowing imported PCBs to compete for finite domestic disposal capacity would increase PCB disposal costs for domestic generators such as itself. Adequate domestic disposal capacity was one of the concerns which caused EPA to close the borders in 1980 and it remains an issue that is being addressed in this rulemaking. The 1980 border closing was focused almost exclusively on waste disposal capacity in Canada. Capacity now exists in Canada as indicated in written and oral comments by Canadian disposal firms (e.g., fixed-site incinerator at Swan Hills, Alberta; mobile incinerators, etc.).

Comments opposing any extension of the current open border policy for waste at concentrations less than 50 ppm PCBs, to PCBs at concentrations of 50 ppm or greater, were submitted by the firm of Hogan & Hartson and others on behalf of several Canadian disposal

concerns. The commenters argued that EPA does not have the statutory authority under TSCA section 6(e)(1) to regulate import for disposal; rather, all imports must be regulated under the statutory ban on manufacture at section 6(e)(3). The commenters also maintained that by this rule EPA was making a significant policy change, and that EPA has failed to support its action with data or analysis, as required by the Administrative Procedure Act (APA) 5 U.S.C. 551 *et seq.* The commenters also questioned the appropriateness of the proposed rule under existing international law governing the shipment of hazardous wastes.

As discussed in Unit I.B. of this preamble under the heading "Statutory Authority," EPA believes it has the authority to regulate import-for-disposal under TSCA section 6(e)(1).

EPA closed the border in 1980 primarily because of both limited disposal capacity in the United States and no appropriate disposal capacity in Canada, the country which presented the greatest potential for exports to the United States. Today, that situation has changed dramatically, with excess U.S. disposal capacity at an all time high, and with the presence of adequate disposal capacity in Canada. EPA believes that today's rule is more in harmony with the international obligations of the United States pertaining to the transboundary shipment and disposal of hazardous wastes than the previous closed border policy.

EPA received a late comment that any decision by the Agency to generally open the border to imports (and exports) would not have been properly announced in the Federal Register and therefore potential commenters did not have an opportunity to provide comment. EPA disagrees with this comment. The notice proposing to open the border clearly requested comments on a broad range of options. The December 6, 1994, Federal Register notice stated: "EPA is requesting comment on the circumstances under which the U.S. border should be opened to transboundary shipments of PCBs for disposal. The options range from allowing all imports for disposal under section 6(e) to maintaining the current closed border status, and might include opening the border to PCBs from a limited geographic area such as the Great Lakes drainage basin" (59 FR 62816). Many of those who provided written comments or oral comments at the public hearing on the issue of opening the border availed themselves of EPA's request. EPA also notes that the written comment period on this rule

was extended once, and totalled 120 days. The public hearing was held after the close of the written comment period, and there was opportunity to file written reply comments after the public hearing. Therefore, EPA rejects the argument of a lack of prior notice and opportunity for comment on this issue.

### C. Discussion of Today's Final Rule

In response to the general support for an expansion of the current exception (i.e., the import of PCBs for disposal at concentrations of less than 50 ppm) to allow import of higher concentration waste under section 6(e)(1) of TSCA, and because EPA has been able to make a finding of no unreasonable risk, EPA is allowing imports of PCB waste at concentrations at 50 ppm or greater, under certain conditions. EPA is adopting the import for disposal portion of the proposed rule, with modifications to eliminate EPA review and approval of each import notice. This final rule eliminates these notice requirements for the import of limited quantities of PCB waste for laboratory analysis or for treatability studies. These activities facilitate the disposal process, and import of these limited quantities will not pose an unreasonable risk to health or the environment. For clarity, EPA is finalizing the provisions of today's rule under a new subpart F of the PCB regulations at 40 CFR part 761, which will include all provisions pertaining to import, export, and other transboundary shipments of PCB waste. References to the new subpart F are being included at §§ 761.20(b) and (c)(3) and 761.60(h) and definitions are being added to § 761.3 for "Basel Convention," "Importer," and "Treatability study."

1. *Import notice.* Under this final rule at § 761.93(b), importers of PCBs and PCB Items are required to submit a PCB waste import notice to EPA's Office of Enforcement and Compliance Assurance. EPA must receive this notice at least 45 days before the first import enters the United States. The notice must contain specific information, including the identity of the importer (company name, name of contact person, address, telephone number, facsimile (fax) number, EPA identification number), the identity of the foreign generator (company name, contact name, address — including country, telephone and fax numbers), countries of transit (if any), port of entry in the United States, and methods of transport (e.g., by ship or rail). The notice must identify the types of PCB waste (e.g., transformers, capacitors, oil, soil) and PCB concentrations, the number and frequency of shipments, maximum shipment size, and the

maximum total quantity to be imported during the period covered by the notice. Projected dates of shipment must be included, as well as the period of time covered by the import notice (not to exceed 12 months). The notice must identify each storage and disposal facility which will be managing the PCB waste covered by the notice (by company name, contact name, address, telephone and facsimile numbers, and EPA identification number). Imported PCB waste must be stored and disposed of in TSCA-approved commercial facilities, unless otherwise noted in § 761.93(b). The notice must also include written certifications from each storage or disposal facility identified in the notice, including the importer if applicable, that the facility has the capacity to store the waste and that no more than 70% of their facilities' approved and operating storage capacity is being used at any one time for imported PCB waste from all sources, the facility agrees to accept the waste, and has the appropriate TSCA approval(s) to manage the waste. In addition, the importer must certify that it is a TSCA-approved commercial storer or disposer of PCBs, and that it agrees to accept full financial liability for the waste from the time it enters the United States until it has been completely and finally disposed of. Such liability includes the costs associated with any spills, cleanups, and additional disposal that may occur. Finally, the importer must certify the completeness and accuracy of the information included in the notice, using existing certification language at 40 CFR 761.185(e).

One commenter stated that EPA should require disposers accepting imported PCB waste to notify all their customers of such imports, so those customers could assess their liability. EPA does not believe this is necessary, in that before it accepts any imported PCB waste, the importer, which must be a commercial storage or disposal facility, must accept full financial liability for this waste. Further arrangements for protection from liability for the mismanagement of imported PCBs are best dealt with in the contractual arrangement between the facility and their domestic PCB waste clients.

One notice will be sufficient for all shipments by the importer for 12 months from the date of the first import, so long as all shipments are accurately described by that notice. A change in import practices during that year which deviates from the notice, such as exceeding the quantities identified in the notice, commencement of import

from a new country, or storage or disposal in a different facility, requires that a new notice be submitted, and received by EPA 45 days prior to the change occurring. A notice submitted to report such changes in import practice should indicate that it is an amendment of an earlier notice. By requiring an import notice only once every 12 months, rather than before every shipment, EPA believes that today's final rule will impose a significantly lighter reporting burden and significantly fewer delays on the regulated community than shipment-by-shipment notification, while still retaining sufficient EPA oversight. If a series of import shipments will continue beyond 12 months, the importer must submit a new import notice to cover the activity which continues beyond the initial 12-month notice period. Provided an importer submits subsequent notices punctually so that they are received by EPA at least 45 days before the annual expiration of the first import notice, the importer should be able to continue importing indefinitely without interruption, assuming the notices are properly filed and complete. EPA believes that 45 days are necessary for it to review the import notice and investigate any associated issues, such as disposal capacity at a facility, or U.S. international obligations pertaining to shipments of waste from specific countries.

EPA recognizes that some of the information required to be submitted in a PCB waste import notice may also be required to be submitted to EPA pursuant to certain international agreements. With the exception of the information and certifications required by § 761.93(b)(1)(iii)(F), (G), and (H), importers may elect to include information in the PCB waste import notice in the same format as the information is submitted under the international agreement. Under all circumstances, the specific certifications required by § 761.93(b)(1)(iii)(F), (G), and (H) must be included in each PCB waste import notice. EPA encourages importers to submit information using the same form submitted under the international agreement, provided the form contains the information required by § 761.93(b)(1)(iii)(A)-(E).

**2. Confidential business information.** EPA believes that the information requested in PCB waste import notices will generally not warrant treatment as confidential business information (CBI) pursuant to section 14 of TSCA. EPA believes that most, if not all, of the information requested in the PCB waste import notice, will not meet the criteria established for TSCA CBI. Also, much of

this information would be accessible to the public through other avenues, such as on manifest forms, or through notices provided under other statutes, such as RCRA, or under international agreements. For instance, while some international agreements, such as the bilateral agreement between the United States and Canada on hazardous waste, have provisions for CBI, many others, such as the Basel Convention, contain no provisions for such information.

EPA strongly recommends that importers not make claims of CBI on their import notices. Notices containing CBI claims will require an enhanced level of review by the Agency. If CBI claims are made, such claims should be accompanied, at the time the claim is made, by a written justification substantiating each item of the claim pursuant to 40 CFR 2.204(e). In accordance with the procedures set forth in TSCA and 40 CFR part 2, EPA will routinely request such substantiation from the importer if it does not accompany the claim of confidentiality. EPA intends to challenge CBI claims, unless the submitter satisfactorily demonstrates a valid need to maintain confidentiality, and can demonstrate that the information is not accessible to the public through other avenues, such as a government-to-government notification under the Basel Convention, or through manifesting.

Any claim of confidentiality must accompany the PCB waste import notice at the time it is submitted to EPA. To make a CBI claim, the importer must submit two copies of each PCB waste import notice. One copy of the notice must contain all information required in § 761.93(b)(1)(iii). In this copy of the notice, the submitter must clearly highlight or mark the specific items claimed as confidential on each page, and identify each item with the label "TSCA Confidential Business Information." This notice must be double wrapped, and the inner envelope marked "PCB Waste Import Notice — CBI Claimed." The outer envelope must be addressed to: TSCA Document Processing Center (7407), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, Washington, DC 20460. Substantiation of CBI claims must be submitted with this copy. The second, "sanitized," copy must contain all information required in the first copy, with the exception that all information claimed as confidential in the first copy must be deleted. This copy must be sent to the address used for non-CBI notices (Attn: PCB Waste Import Notice, Office of Enforcement and Compliance Assurance, Office of

Compliance (2222A), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460). EPA will not consider a PCB waste import notice that contains CBI claims to be complete for purposes of this rule, nor initiate the 45-day time period, until both copies and the written substantiation are received by EPA.

**3. Review of import notice.** EPA will screen incoming PCB import notices for compliance with the notice conditions required by § 761.93(b)(1). EPA may refuse entry of individual PCB waste import shipments in instances where the import notice is incomplete, inaccurate, or the designated storage or disposal facility is not approved for the type, concentration, or quantity of waste proposed. EPA is also reserving the right to refuse entry based on shortage of the storage or disposal capacity at the designated facility (including non-compliance with the 70% storage capacity requirement), or non-compliance with international law or obligations that would result from a given import. In addition, EPA may always at a later date bring an enforcement action against a shipment which has already entered the United States.

**4. Regulation of PCBs after import.** EPA is also including a provision at § 761.93(b)(2) in the final rule to address the storage and disposal of imported PCB wastes in the United States. Imported PCBs and PCB Items are subject to all applicable marking provisions of subpart C, and must be stored and disposed of in accordance with subpart D. All storage container provisions of subpart D apply, as well as any applicable Department of Transportation (DOT) standards.

In general, all PCB wastes imported into the United States are regulated under 40 CFR part 761 in the same manner as domestic PCBs except that imported PCB wastes must be stored and disposed of in a facility with an appropriate commercial storage or disposal approval that has been issued under section 6(e) of TSCA. Imported PCB wastes may not be stored at a facility which is not approved as a commercial storer of PCB waste, nor may they be disposed of at a facility without a TSCA disposal approval issued by EPA, such as a municipal solid waste landfill, boiler, industrial furnace, or high-efficiency boiler. For instance, intact and non-leaking fluorescent light ballasts and drained PCB-contaminated electrical equipment from domestic sources are currently allowed under TSCA to be disposed of as municipal solid waste. However, if these PCB items are imported for

disposal, they must be treated as PCB waste. They must be manifested, stored at a commercial storage facility, and disposed of in a TSCA-approved disposal facility (e.g., incinerator or TSCA landfill). The handling of all imported PCBs and PCB Items as PCB waste subject to subpart D is a necessary condition of EPA's finding of no unreasonable risk for the import of PCBs for disposal. EPA is mandating the use of TSCA-approved commercial storage and disposal facilities for the same reason; such facilities have financial assurance to ensure proper closure, they must submit annual reports to the Agency, and they have Agency approved capacity limits at their storage facilities. These conditions are necessary for the Agency to track imported PCB waste, and they permit the United States to assure the exporting country that the imported PCB waste is being managed in an environmentally sound manner.

Imported PCB waste is subject to the 1 year limit on storage for disposal at § 761.65(a). For calculation of the 1 year storage for disposal limitation, EPA will consider storage for disposal to initiate on the first one of the following three dates, as applicable: (1) The date the PCB waste enters a State in the 48 contiguous States; (2) the date the PCB waste enters any State, if the waste is to be disposed of in that State; (3) the date the waste enters a State outside the contiguous 48 States, if the waste is stored in that State for more than 10 consecutive days. The first of these instances will be the usual situation. The second provision currently is expected to apply to waste disposed of at the U.S. Army's disposal facility at Johnston Atoll, as this is currently the only TSCA-approved disposal facility outside the contiguous 48 States. The third instance is intended to prevent the indefinite storage of waste in a State. For instance, shipments of waste in transit from another country to the U.S. mainland might enter a Hawaiian port for a few days for transfer to another vessel. EPA does not consider such a transfer to begin the 1 year storage for disposal time period. However, EPA does not wish to allow waste to be stored at dockside or in ships for weeks on end. Ten days is the existing regulatory limit on such transfer storage, because that is the time limit imposed on storage at a transfer facility without approval for commercial storage (see § 761.3, definition of a "transfer facility"). That is, if waste is stored at a port for over 10 days, it must be stored by an approved commercial storer, and the 1 year storage for disposal limit will

also commence for that waste. Importers should be aware that the 1 year limit on storage for disposal automatically precludes the legal import of PCB wastes that cannot be disposed of within 1 year, such as some types of mixed PCB-radioactive wastes for which there are currently no permanent disposal solutions.

**5. Recordkeeping and manifesting.** For purposes of recordkeeping under 40 CFR part 761, subpart J, "General Records and Reports," importers, other than those who are the initial commercial storer or disposer of the waste, are required by § 761.93(b)(3)(i) to keep the same annual records required of domestic generators. EPA is not requiring importers to keep these records if the waste is imported directly upon entry to the importers own facility, because these records would be duplicative of those maintained by the facility as a commercial storer or disposer under § 761.180(b). Importers who must keep the records required of generators, shall keep those records distinct from those that the importer maintains in its capacity as a commercial storer and disposer. If the importer also happens to be a generator of (domestic) PCB waste, and is required to keep annual records for those wastes, the annual log must clearly distinguish between the imported and domestic wastes. For instance, the log must indicate in some manner, such as a code, asterisk, bolding, or separate subheadings, each item on the log (manifest numbers, PCB Articles, PCB Containers, etc.) that came from a foreign source. The totals required at § 761.180(a)(2)(iii) must also include separate subtotals for imported wastes in those categories. The log need only distinguish imported waste from domestic waste, and need not identify the country of origin or subdivide the subtotals by specific country of origin.

Similarly, all disposers and commercial storers who accept imported waste must identify imported wastes as such in their annual logs, and provide subtotals for imported wastes in their annual logs and the annual report they must submit to EPA pursuant to the requirements at 40 CFR 761.180(b). Such denoted records and reports will assist EPA in monitoring the effect of waste imports on domestic disposal rates and disposal capacity.

Section 761.93(b)(3)(ii) of today's rule makes the part 761, subpart K requirements applicable to imported PCB wastes with certain modifications. In filling out the manifest, identifying information on both the importer and the foreign generator must be substituted for information on the

generator. The importer must also sign the manifest in place of the generator, and obtain the signature of the first U.S. transporter. These provisions conform to the requirements of 40 CFR part 262, subpart F for the manifesting of imported Hazardous Waste under RCRA.

In general, the importer shall be considered the generator under this rule for purposes of compliance with the provisions of subpart K. Since importers are required by this rule to be TSCA-approved commercial storers or disposers, they are required to have already submitted a Form 7710-53 under § 761.205 and received a unique EPA identification number.

Also, EPA is requiring that all imported PCB waste must be manifested, even if the importer is also the receiving facility indicated on the manifest. That is to say, if a commercial disposal facility is importing waste to its own facility, even with its own trucks, it must manifest the waste; it cannot claim exemption from the manifest requirements as a "generator" who has not relinquished control over its own waste. This provision also applies to persons in the United States importing PCB wastes generated by their own facilities abroad. At § 761.207(a), EPA exempted domestic generators from manifesting shipments so long as they retained control, to encourage consolidation of waste, and because EPA could track the waste's movement through the generators' annual records. Since neither the rationale nor the control mechanism applies to waste generated at foreign sites, EPA is requiring that all PCB waste imported pursuant to § 761.93(b) be manifested. EPA recognizes that this will create many instances where an importing company will manifest waste to itself. EPA is also stipulating that imported PCB wastes always be manifested separately from domestic PCB wastes, both to insulate domestic waste generators from liability for imported wastes, and to simplify tracking of imported wastes for annual records, annual reports, and EPA compliance monitoring.

**6. Analytical samples.** Under § 761.93(c), EPA is adding a provision to today's rule allowing limited quantities of PCB waste to be imported into the United States by any commercial storer, disposer, or laboratory to determine physical and chemical properties of the PCBs. (For purposes of this rule, EPA considers such analysis as a disposal related activity, and within the scope of today's rule under section 6(e)(1) of TSCA.) This action is being taken in order to facilitate storage or disposal,

and verification of appropriate storage and disposal approval conditions and sufficient storage capacity. No prior notification or approval is required under this provision. However, laboratories, storers, and disposers importing samples should be aware that notification may nevertheless still be required for these shipments by other Federal, State, or local laws or international treaties. Analytical samples are also subject to TSCA section 13 import certification (40 CFR 707.20). As with all other PCBs of unknown concentration, samples containing unknown concentrations of PCBs must be assumed to contain, and treated as if they contain, PCBs at concentrations of 50 ppm or greater. All unused PCB waste sample material and residuals from any testing must be stored in compliance with § 761.65(b) and disposed of in compliance with § 761.60. Quantities imported by each importing facility are being limited to annual levels of 25 liters for liquids, and 200 kilograms for non-liquid PCBs, such as soil or sediment. Individual samples are being limited in size to 25 milliliters for liquids and 5 kilograms for non-liquids. In addition, laboratories must comply with existing conditions at § 761.65(i) for the handling of PCB samples, and in conformity to the definition of commercial storer, must be approved as a commercial storer if they store a total of more than 500 gallons of PCBs at any one time (for computation of non-liquid PCB volume, 500 gallons (U.S.) equals approximately 1.89 cubic meters).

By eliminating the notification provision for analytical samples, EPA is allowing U.S. laboratories, storers, and disposers to handle samples from foreign sources in the same manner that they are permitted to handle domestic samples. EPA believes that to impose a notification requirement, and the corresponding 45-day advance notice provision, would impose an unreasonable burden on U.S. laboratories, storers, and disposers which could significantly affect their ability to compete for foreign business. Because of the limited quantities of waste being imported under this provision, and the controlled environment where such samples will be handled, EPA finds that allowing such limited imports will not pose an unreasonable risk of injury to human health or the environment.

PCBs at concentrations of less than 50 ppm may continue to be imported without regard to the quantity limits and storage and disposal requirements imposed by § 761.93(c), since these provisions only apply to PCBs at

concentrations of 50 ppm or greater. The import of PCBs for disposal at concentrations less than 50 ppm is allowed without restriction by § 761.93(a)(1)(i).

*7. Treatability studies.* A similar provision is being added at § 761.93(d) to allow TSCA-approved disposal facilities to import, without prior notification, limited quantities of PCB waste for treatability studies. Such studies are typically performed to determine the suitability and effectiveness of a disposal method on a specific sample of PCB waste. EPA is imposing limits on the annual quantity of waste imported (500 gallons), the maximum concentration of PCBs in samples (10,000 ppm), and the annual quantity of pure PCBs present in the material (1 kilogram). These limits conform to those proposed by EPA (59 FR 62788) for self-implementing Research and Development studies. Larger quantities may be imported for treatability studies under § 761.93(b). Appropriate marking, storage, disposal, manifesting, and recordkeeping provisions apply to PCB waste imported under § 761.93(d). Also, as with analytical samples, PCB waste shipped for treatability studies may be subject to notification requirements under other laws or international treaties. Treatability study wastes are also subject to TSCA section 13 import certification (40 CFR 707.20). Treatability waste containing unknown concentrations of PCBs must be assumed to contain, and treated as if they contain, PCBs at concentrations of 50 ppm or greater. EPA believes that it is appropriate to allow such treatability sample shipments to occur without prior notification, because the delays involved in notification would place U.S. disposers at a competitive disadvantage with foreign competitors, and would unfairly penalize foreign waste generators wishing to do business with U.S. disposers vis-a-vis domestic generators, who are only required to manifest samples.

*8. Other imports and transboundary shipments.* The general exceptions to the import prohibition, proposed at § 761.20(b)(2) are being included in this final rule at § 761.93(a)(1). Section 761.93(a)(1)(i) allows for the import of PCBs and PCB Items for disposal at concentrations of less than 50 ppm, as was allowed prior to this rule by § 761.20(b)(2). PCBs and PCB Items at concentrations less than 50 ppm are not regulated for disposal under 40 CFR part 761, subpart D, and are allowed to be imported and exported for disposal under TSCA section 6(e)(1).

Section 761.93(a)(1)(ii) allows for the shipment of PCBs for disposal from United States territories and possessions outside the customs territory of the United States. As explained in detail in the preamble to the proposed rule (59 FR 62788 at 62816), these shipments are technically considered "imports" under TSCA. This import activity may be conducted without going through the notice process at § 761.93(b)(1). EPA does not find a notice necessary to make a finding of no unreasonable risk, since the PCBs are already in the United States, and are, and have always been, subject to all use, distribution in commerce, and disposal requirements of 40 CFR part 761, but must be "imported" into the customs territory of the United States for ultimate disposal.

EPA is not finalizing the proposed § 761.20(b)(6) in today's final rule. This section proposed to codify EPA's current policy toward certain transboundary shipments of PCBs which are not treated as import or export for purposes of 40 CFR part 761. EPA will address this issue, along with other issues raised by the December 6, 1994, proposed rule, including export of PCBs at concentrations of 50 ppm or greater, in a separate Federal Register notice at a later date.

EPA is adopting the proposed § 761.20(c)(3)(i), now at § 761.97(a)(1), which allows the export of PCBs for disposal at concentrations of less than 50 ppm. Such export had up until today's rule been permitted under § 761.20(b)(2). Although EPA intends to address the general issue of export at a later date in the final PCB Disposal Amendments, it is necessary to finalize this one export provision in today's rule to preserve the status quo on exports. Otherwise, with the elimination of the language at old § 761.20(b)(2), delaying promulgation of the proposed 761.20(c)(3)(i) would make the export for disposal of PCBs at concentrations less than 50 ppm illegal in the interim between the effective date of this rule and the effective date of the final PCB Disposal Amendments. EPA is placing the reference to the subpart F export provisions in § 761.20(c)(3), which addresses export for disposal. EPA believes this location is more appropriate than § 761.20(b), which addresses manufacturing and importing prohibitions. EPA intends to include all subsequent export for disposal provisions under § 761.97.

### III. Official Rulemaking Record

In accordance with the requirements of section 19(a)(3) of TSCA, EPA established the record of this rulemaking with the proposed rule. This

record includes basic information considered by the Agency in developing the proposal, and now includes information added since the publication of the proposed rule, including comments on the proposed rule, a transcript of the public hearing on the rule, and reply comments on the hearing. The following comments were received on the proposed PCB Exemptions Rule (Docket number OPPTS-66019) and are also included: all comments and information received from S.D. Myers, Inc.; Foley, Hoag & Eliot; and Hogan & Hartson for Chem Securities and Bovar. All of these materials (Docket number OPPTS-66009B) are available for inspection and copying in the TSCA Nonconfidential Information Center, Monday through Friday (excluding holidays) from 12 noon to 4 p.m., in Room G-102 (401 M St., SW., Washington, DC). However, any information claimed as CBI that is a part of the record for this rulemaking is not available for public review. A public version of the record, from which information claimed as CBI has been excluded, is available for inspection.

The following Federal Register Notices are included in the docket:

1. 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."
3. USEPA, 54 FR 52176, December 21, 1989, "Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities: Final Rule." OPTS-62059
4. USEPA, 55 FR 26204, June 27, 1990, "Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities: Correction to Final Rule." OPTS-62059
5. USEPA, 57 FR 20602, May 13, 1992, "Hazardous Waste Management System; Notification Concerning the Basel Convention's Potential Implications for Hazardous Waste Exports and Imports: Notice."
6. USEPA, 59 FR 62788, December 6, 1994, "Disposal of Polychlorinated Biphenyls: Proposed Rule." OPPTS-66009A
7. USEPA, 59 FR 62875, December 6, 1994, "Polychlorinated Biphenyls; Manufacturing, Processing, and Distribution in Commerce; Proposed Decision on Exemption Petitions: Proposed Rule." OPPTS-66019

#### IV. Regulatory Impact

In general, this PCB import rule will bring U.S. regulations regarding PCB shipments to the United States in closer conformance with the principles of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.

The research of the economic impacts of this action focused on whether import levels will generate an economic impact of \$100 million per year or more for U.S. companies. Contacts were made to: (1) PCB waste management companies, (2) the Environmental Technology Council, a trade association representing waste management organizations in the United States, Canada, and Mexico.

EPA has found that the expected regulatory impacts will be positive and consist predominantly of increased revenues for U.S. PCB waste management companies. No significant negative impacts were identified for any sector of the U.S. economy.

1. *Forecasts of import levels.* Industry personnel surveyed by an EPA contractor during the development of the Economic Assessment for the Final PCB Import Rule indicated that the majority of PCB waste imports will originate in Canada, with additional wastes originating in Mexico. One recent estimate set the quantity of Canadian PCBs in use at 50,000 metric tons and PCB wastes in storage (including electrical equipment and contaminated soils) at 140,000 metric tons (Ref. 3). These figures, which total over 400 million pounds of potential PCB waste imports, do not include light ballast wastes. Assuming that PCB waste disposal and management will generate revenues of \$1 per pound, this figure represents an overall market of over \$400 million. Canada has an operating PCB disposal facility at Swan Hills, Alberta. Canada also has some smaller, mobile disposal facilities available which can handle PCB waste. Therefore, a share of the Canadian wastes will be disposed of in Canada even if the U.S. border is opened to these wastes.

Limited data are available on Mexico's PCB waste quantities. A 1995 study by ERM-Mexico, "Polychlorinated Biphenyls in Mexico" (Ref. 1), indicates that Mexico has 10,000 metric tons of liquid PCB waste and perhaps over 10,000 PCB transformers and capacitors. Combined, these wastes might approach 100 million pounds. Chemical Waste Management operates a chemical landfill in Mexico that accepts low-concentration PCB wastes, but no incinerators are operating in Mexico. As

a result, some Mexican companies are currently shipping PCB wastes to Europe for disposal.

Other than Canada and Mexico, additional major sources of PCB wastes are uncertain. PCB disposal industry personnel have indicated to EPA that they do not believe that large-scale PCB shipments from Japan or Europe would occur, based on their opinion that transportation costs would be excessive and that there are likely to be more conveniently located disposal sites elsewhere (Ref. 10). For example, in Europe, PCB disposal facilities reportedly exist in Great Britain, the Netherlands, France, and Finland.

2. *Conclusions on import levels.* While data on which to base a forecast are limited, it was judged that revenues from PCB imports will not exceed \$100 million per year. The total potential import market from Canada and Mexico is estimated to be in the vicinity of 500 million pounds of waste, representing a total market of \$500 million. Only if all wastes from Canada and Mexico were imported within 5 years could U.S. revenues increase by over \$100 million per year. As noted, however, a share of the Canadian waste will be disposed of in Canada. Further, while the rate at which importing will occur is unknown, the lack of regulations mandating swift disposal in the exporting countries suggests that imports will occur over a longer time period than 5 years.

Given the above observations, it was judged more likely that revenues from disposal of imported PCB wastes will fall in the range of \$50 million to \$100 million per year. Although revenues might increase further if additional PCB wastes arrive from other countries, the volume of such imports is not expected to be large.

3. *Forecasts of price changes for disposal of PCB wastes.* EPA's analysis in support of this rule also examined the likelihood that importing of PCB wastes would increase prices for disposal services, thereby generating economic impacts for domestic PCB waste generators. The current level of capacity utilization among PCB disposal companies is the main factor influencing the likelihood of price increases.

The Environmental Technology Council (ETC), Washington, DC., was contacted by EPA during the preparation of the Economic Assessment, and reports to EPA a substantial unused capacity at domestic PCB waste disposal facilities, based on ETC's own research. Two new facilities have begun operations in the last few years and another is preparing for commercial operations. ETC estimates

these facilities represent an increase in U.S. capacity for PCB waste incineration of nearly 50 percent in the last 3 years. EPA's survey of the disposal industry in support of this rule also indicates a large capacity surplus. The existing unused capacity appears sufficient such that imports could be handled without displacing domestic wastes or causing U.S. prices to increase significantly. No other notable domestic economic impacts are forecast.

4. *Other economic impacts.* The final PCB import rule will have several positive economic impacts. PCB waste management companies indicated that the rule will boost their industry and create jobs in the United States. The final PCB rule will not materially affect productivity, competition, or Federal, State, or local governments.

#### V. References

1. ERM-Mexico, Polychlorinated Biphenyls (PCBs) in Mexico, Report for the Commission for Environmental Cooperation (Draft), August 1995, 48pp.
2. Ross Associates, Status of PCB Management in the United States, Report for Commission for Environmental Cooperation, August 24, 1995.
3. Procter Redfern, Status of PCB Management in Canada, Report for Commission for Environmental Cooperation (Draft Final Report), September 1995, 26pp.
4. Letter from Lynn R. Goldman, M.D. to the Honorable David M. McIntosh, Status of Import for Disposal Petitions filed by S.D. Myers, Inc., September 26, 1993, 2pp.
5. USEPA, Region 4, Public Health and Environmental Exposure Assessment (Draft), Unison PCB Separation Facility Henderson County, Kentucky, August 1986.
6. USEPA, OAQPS, Deposition of Air Pollutants to the Great Waters, First Report to Congress, May 1994.
7. USEPA, OAQPS, Identification of Sources Contributing to the Contamination of the Great Waters by Toxic Compounds, March 17, 1993, 145pp.
8. USEPA, OAQPS, Exposure and Effects of Airborne Contamination for the Great Waters Program Report, December 22, 1992, 201pp.
9. USEPA, OAQPS, Relative Atmospheric Loadings of Toxic Contaminants and Nitrogen to the Great Waters, March 15, 1993, 142pp.
10. USEPA, OPPT, RIA, Niskam Agarwal, Economic Assessment for the Final PCB Import Rule, February 23, 1996, 17 pp.
11. USEPA, OPPT, Dr. William H. Sanders, Letter to Dr. D.Sharma, USDOT, December 18, 1995, 2pp.
12. U.S. Department of Transportation, Letter from Dr. D.K. Sharma to William H. Sanders, USEPA, February 20, 1996, 2pp.
13. USEPA, OPPT, Response to Comments on Proposal to Import PCBs for Disposal (Docket 66009B), March 1, 1996.

#### VI. Regulatory Assessment Requirements

##### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this regulatory action is not "significant" and therefore not subject to review by the Office of Management and Budget (OMB).

##### B. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency has considered whether this regulatory action will have an adverse economic impact on small entities. An analysis of the potential impact on small entities is present in the regulatory flexibility analysis, which is included as part of the Economic Assessment that was prepared for this rulemaking. Based on that analysis, EPA has determined that this regulatory action does not impose any adverse economic impacts on small entities. Information relating to this determination has been included in the docket for this rulemaking.

##### C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq and has assigned OMB control number 2070-0149 (EPA ICR No. 1770.01).

Receipt by the U.S. of internationally-generated PCB wastes under this rule will increase the volume of PCBs that is distributed in commerce, stored, and disposed of by the U.S. disposal industry. Advance knowledge of those activities through the PCB waste import notice will allow EPA to act on these requests in a manner that will ensure the national storage capacity for PCB waste is not exceeded and that facilities receiving such wastes are capable of handling this material (e.g., the facility has an EPA approval, adequate storage capacity, and accepts liability for the waste). Prior notice will also give EPA the opportunity to ensure that such imports are in compliance with international law and obligations of the United States.

Data that are submitted to the Agency will be used by EPA to ensure an unreasonable risk of injury to health and the environment will not ensue from the respondents' PCB activities. The data will also be made available to EPA regional inspectors, or their agents, to supplement their compliance efforts in implementing the requirements/conditions of the PCB regulations. The prior notice of import requirements in this rule will allow the Agency to address the special liability concerns inherent in the transboundary shipment of PCB waste.

The public reporting and recordkeeping burden for this collection of information is estimated to average 134 hours per respondent annually, at an annual cost of \$5,468. EPA estimates that 10 respondents will each file 12 notices annually, at an average burden of 11 hours, \$470, per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. EPA is also amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations, which appears at 40 CFR part 9. This amendment updates the table to accurately display OMB approval of the information requirements contained in this final rule. This display of the OMB control number and its subsequent codification in the Code of Federal Regulations satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and OMB's implementing regulations at 5 CFR 1320.

The ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section

553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

**D. Environmental Justice**

According to Executive Order 12898 (59 FR 7629, February 16, 1994), each Federal Agency is required to "analyze the environmental effects, including human health, economic and social effects, of Federal actions, including effects on minority communities and low-income communities. . . ."

Accordingly, EPA examined the impact of the PCB import rule on the distribution of PCB management activities relative to the socioeconomic characteristics of the surrounding communities.

EPA finds that the PCB import rule does not directly affect the citing of PCB management facilities; imported PCBs will be managed at existing TSCA-approved facilities. Based on the PCB import rule's lack of influence on siting of new facilities, EPA concludes that the

PCB import rule does not create environmental injustice.

**E. Unfunded Mandates Reform Act and Executive Order 12875**

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), EPA has determined that this regulatory action does not contain any "unfunded mandates," as described by the Act, for State, local, or tribal governments, or the private sector. In addition, EPA has determined that this action does not result in the expenditure of \$100 million or more by any State, local, or tribal governments, or by anyone in the private sector. The costs associated with this action are described in the Executive Order 12866 section above.

**Lists of Subjects in 40 CFR Part 9**

Environmental protection, Reporting and recordkeeping requirements.

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

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

Dated: March 8, 1996.

Carol M. Browner,

Administrator.

Therefore, 40 CFR chapter I is amended as follows:

**PART 9 [AMENDED]**

1. In part 9:

a. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136-136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601-2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp. p 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901-6992k, 7401-7671q, 7542, 9601-9657, 11023, 11048.

b. Section 9.1 is amended by adding the new entries to the table to read as follows:

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

\* \* \* \* \*

40 CFR citation	OMB control No.
Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions	
* * * * *	
761.93(a)(1)(iii) .....	2070-0149
761.93(b) .....	2070-0149
* * * * *	

**PART 761 [AMENDED]**

2. In part 761:

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

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

b. In § 761.3 by adding alphabetically definitions for "Basel Convention," "Importer," and "Treatability study" to read as follows:

\* \* \* \* \*

*Basel Convention* means the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal as entered into force on May 5, 1992.

\* \* \* \* \*

*Importer* means any person defined as an "importer" at § 720.3(l) of this chapter who imports PCBs or PCB Items and is under the jurisdiction of the United States.

\* \* \* \* \*

*Treatability Study* means a study in which PCB waste is subjected to a treatment process to determine:

- (1) Whether the waste is amenable to the treatment process;
- (2) What pretreatment (if any) is required;
- (3) The optimal process conditions needed to achieve the desired treatment;
- (4) The efficiency of a treatment process for the specific type of waste (i.e., soil, sludge, liquid, etc.); or,
- (5) The characteristics and volumes of residuals from a particular treatment process. A "treatability study" is not a mechanism to commercially treat or dispose of PCB waste. Treatment is a form of disposal under this part.

\* \* \* \* \*

c. In § 761.20 by revising the first two sentences of the introductory text, paragraphs (b) and (c)(3) to read as follows:

**§ 761.20 Prohibitions.**

Except as authorized in § 761.30, the activities listed in paragraphs (a) and (d) of this section are prohibited pursuant to section 6(e)(2) of TSCA. The requirements set forth in paragraph (c) of this section and subpart F of this part concerning export and import of PCBs and PCB Items for disposal are established pursuant to section 6(e)(1) of TSCA. \* \* \*

\* \* \* \* \*

(b) No person may manufacture PCBs for use within the United States or manufacture PCBs for export from the United States without an exemption, except that: an exemption is not required for PCBs manufactured in an excluded manufacturing process as defined in § 761.3, provided all applicable conditions of § 761.1(f) are met.

\* \* \* \* \*

(c) \* \* \*

(3) PCBs and PCB Items may be exported for disposal in accordance with the requirements of subpart F of this part. \* \* \* \* \*

d. In § 761.60 by revising paragraph (h) to read as follows:

**§ 761.60 Disposal requirements.**

\* \* \* \* \*

(h) Requirements for export and import of PCBs and PCB Items for disposal are found in Subpart F of this part.

\* \* \* \* \*

e. By adding a new Subpart F to read as follows:

**Subpart F—Transboundary Shipments of PCBs for Disposal**

Sec.

761.91	Applicability.
761.93	Import for Disposal.
761.97	Export for Disposal.

**Subpart F—Transboundary Shipments of PCBs for Disposal**

**§ 761.91 Applicability.**

This subpart establishes requirements under section 6 of TSCA applicable to the transboundary shipments of PCBs and PCB Items into and out of the United States for disposal. Nothing in this subpart is intended to obviate or otherwise alter obligations applicable to imported or exported PCBs and PCB Items under foreign laws, international agreements or arrangements, other United States statutes and regulations, other sections of TSCA (e.g., sections 13 and 14), or laws of the various States of the United States. No provision of this section shall be construed to affect or limit the applicability of any requirement applicable to transporters of PCB waste under regulations issued by the U.S. Department of Transportation (DOT) and set forth at 49 CFR parts 171-180.

**§ 761.93 Import for disposal.**

(a) *General provisions.* (1) No person may import PCBs or PCB Items for disposal without an exemption, except that:

(i) PCBs and PCB Items at concentrations less than 50 ppm may be imported for disposal.

(ii) PCBs and PCB Items at concentrations of 50 ppm or greater may be imported from United States territories or possessions outside the customs territory of the United States into the customs territory of the United States for disposal.

(iii) PCBs and PCB Items at concentrations of 50 ppm or greater, other than those described in paragraph (a)(1)(ii), may be imported for disposal pursuant to paragraph (b) of this section.

(iv) PCBs and PCB Items at concentrations of 50 ppm or greater may be imported for analysis and disposal pursuant to paragraph (c) of this section.

(v) PCBs and PCB Items at concentrations of 50 ppm or greater may be imported for evaluation of disposal technologies for PCB waste pursuant to paragraph (d) of this section.

(2) For purposes of paragraph (a)(1) of this section, PCBs and PCB Items of unknown concentrations shall be treated as if they contain 50 ppm or greater.

(3) All imports of PCBs and PCB Items at any concentration under paragraph (a)(1) of this section must be in compliance with all international agreements or arrangements that the United States has entered into applicable to PCB waste imports. The United States retains the authority to disallow any PCB waste import not in compliance with these agreements or arrangements, or other international obligations of the United States.

(b) *PCBs and PCB Items.* PCBs and PCB Items at concentrations of 50 ppm or greater may be imported for disposal under paragraph (a)(1)(iii) of this section only by a person who is an approved commercial storer or disposer under subpart D of this part, and only if a PCB waste import notice is submitted to EPA pursuant to this paragraph.

(1) *PCB waste import notice.* (i) PCB waste import notices under this paragraph must be submitted to EPA in writing. The complete PCB waste import notice must be received by EPA at the mailing address or delivery address set forth in this paragraph at least 45 days prior to the date on which the initial shipment enters the United States. Each notice shall be clearly marked "PCB Waste Import Notice" and shall be sent by certified mail to: Attn: PCB Waste Import Notice, Office of Enforcement and Compliance Assurance, Office of Compliance (2222A), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Alternately, notices may be delivered by courier to the same office at the Ariel Rios Building, room 5124, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

(ii) Each PCB waste import notice may cover an individual shipment or a series of shipments extending over a period up to 12 months beginning with the date on which the initial shipment enters the United States. A new notice must be received by EPA every 12 months if import for disposal will continue. A new notice must also be received by EPA at any time that import will deviate from the terms described in the prior notice, at least 45 days before the

activity constituting the deviation begins. Such notices should indicate that the notice is a revision, and indicate what information has changed.

(iii) Each PCB waste import notice shall contain the following information:

(A) Company name, name of a contact person, address, telephone number, facsimile (FAX) number, and EPA identification number of the importer of PCB waste.

(B) Company name, name of contact person, address (including country), telephone number, and facsimile (FAX) number of the foreign generator, countries of transit (if any), port of entry in the United States, and method of transportation.

(C) Types of PCBs and PCB Items to be imported (e.g., transformers, capacitors, oil, soil), PCB concentrations of each type of PCB or PCB Items, number and frequency of shipments, maximum shipment size, and maximum total quantity to be imported during the designated import period.

(D) Projected dates of shipments, and period of time intended for import activities addressed by the notice (not to exceed 12 months).

(E) Name, contact name, address, telephone number, facsimile (FAX) number, and EPA Identification Number of each TSCA-approved commercial storage and disposal facility where the PCB waste will be stored and disposed of.

(F) Written certification from each TSCA-approved commercial storage or disposal facility identified in paragraph (b)(1)(iii)(E) of this section, including the importer, indicating that each facility has agreed to accept the shipments of PCBs or PCB Items; has approval to store or dispose of PCB waste under subpart D of this part; has sufficient storage capacity available for imported PCB waste; and until March 18, 1999, will not exceed the 70% capacity limit imposed on imported PCB waste under paragraph (b)(2)(i) of this paragraph.

(G) Written certification from the importer, stating: "I certify that I am a TSCA-approved commercial storer (disposer) of PCB waste, and that I accept complete financial liability for the transportation, storage, and disposal of all PCBs and PCB Items imported into the United States under this notice."

(H) Written certification pursuant to § 761.185(e), signed by the importer identified in paragraph (b)(1)(iii)(A) of this section, indicating that the information in the notice is complete and accurate.

(iv) Some of the information required to be submitted in a PCB waste import notice may also be required to be

submitted to EPA pursuant to certain international agreements. With the exception of information required by paragraphs (b)(1)(iii)(F), (G), and (H) of this section, importers may elect to include information in the PCB waste import notice using the same form submitted under the international agreement provided the form contains the information required by paragraphs (b)(1)(iii)(A)-(E) of this section. Under all circumstances, the specific certifications required by paragraphs (b)(1)(iii)(F), (G), and (H) of this section must be included in each PCB waste import notice.

(v) Notwithstanding the submission of a PCB waste import notice pursuant to this subpart, EPA reserves the right to refuse entry into the United States of individual shipments of PCBs or PCB Items that do not comply with applicable Federal laws and regulations. EPA also reserves the right to bring an enforcement action against an importer whose past import of PCBs or PCB Items does not comply with applicable Federal laws or regulations.

(vi) Submission of a PCB waste import notice under paragraph (b)(1)(i) of this section does not replace or satisfy other import notice or consent requirements of applicable international agreements or arrangements, of the Resource Conservation and Recovery Act (RCRA), of other Federal statutes, or of TSCA section 13 (see 40 CFR 707.20).

(vii) Confidential business information. (A) EPA believes that the information requested in PCB waste import notices generally will not be entitled to be treated as confidential business information (CBI) pursuant to section 14 of TSCA. However, a person submitting a PCB waste import notice may claim as CBI information the person believes to be entitled to confidential treatment under TSCA section 14 and part 2 of this chapter. If no claim is made at the time the notice is submitted, the information in the notice shall be available to the public without further notice to the submitter. If CBI claims are made, such claims shall be made by marking the specific information in the notice that is claimed CBI. In addition each claim should be accompanied, at the time the claim is made, by a written justification substantiating each item of the claim pursuant to 40 CFR 2.204(e). In accordance with the procedures set forth in TSCA and part 2 of this chapter, EPA will routinely request such substantiation from the importer if it does not accompany the claim of confidentiality.

(B) Any claim of confidentiality shall accompany the PCB waste import notice

at the time it is submitted to EPA. The importer shall submit two copies of each PCB waste import notice if a claim of confidentiality is made.

(1) One copy of the notice shall contain all information required in paragraph (b)(1)(iii) of this section. In this copy of the notice, the submitter must clearly highlight or mark the specific items claimed as confidential on each page, and identify each item with the label "TSCA Confidential Business Information." This notice shall be double wrapped, and the inside envelope marked "PCB Waste Import Notice—CBI Claimed." The outside envelope shall be addressed to: TSCA Document Processing Center (7407), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Substantiation of CBI claims should be sealed inside the inner envelope and submitted with this copy.

(2) The other copy shall contain all information required in paragraph (b)(1)(iii) of this section, except that all information claimed as confidential in the first copy must be deleted. This copy must be sent to the address indicated in (b)(1)(i) of this section.

(3) If the importer claims any information in the PCB waste import notice as CBI, the PCB waste import notice is not considered complete for purposes of this paragraph until both copies and the written substantiation are received by EPA.

(2) *Storage and disposal.* Imports of PCBs and PCB Items under paragraph (a)(1)(iii) of this section are subject to the following conditions, in addition to all other applicable provisions of this part.

(i) No facility that stores or disposes of imported PCB waste shall store at any time a combined quantity of imported PCB waste from all sources in excess of 70% of the facility's approved maximum PCB storage capacity, pursuant to § 761.65(d)(4)(iii). This limit on the acceptance of imported PCB waste shall expire on March 18, 1999.

(ii) All PCBs and PCB Items imported for disposal under paragraph (a)(1)(iii) of this section are PCB wastes subject to 40 CFR part 761, subpart D and:

(A) Shall be stored and disposed of in facilities which have approval under subpart D of this part to store or dispose of the type of PCB waste being imported.

(B) Shall be marked in accordance with subpart C of this part, and packaged and stored in accordance with subpart D of this part.

(C) For purposes of compliance with the 1 year storage for disposal limit under § 761.65(a), the date of removal

from service for disposal for imported PCB waste shall be whichever of the following dates occurs first:

(1) The date the PCB waste enters the contiguous 48 States.

(2) The date the PCB waste enters any State, if the PCB waste will be disposed of in that State.

(3) The date the PCB waste enters a State outside the contiguous 48 States, if the PCB waste is stored in that State for a period of more than 10 consecutive days.

(3) *Recordkeeping and manifesting.* (i) Importers, storers, and disposers of imported PCBs and PCB Items under paragraph (a)(1)(iii) of this section shall meet the requirements of subpart J of this part, with the following modifications:

(A) An importer who is not the initial commercial storer or disposer of the imported PCB waste is considered to be the generator for purposes of maintaining annual records under § 761.180(a); the annual document log maintained under § 761.180(a)(2) must clearly distinguish between imported and domestically generated waste.

(B) Disposers and commercial storers of PCB waste must clearly distinguish between imported and domestically generated waste in the annual document log maintained under § 761.180(b)(2), and in the annual report submitted to EPA under § 761.180(b)(3).

(ii) Importers, storers, and disposers of PCBs and PCB Items under paragraph (a)(1)(iii) of this section shall meet the requirements of subpart K of this part, with the following modifications:

(A) Imported PCB waste shall be manifested, even in cases where the importer does not relinquish control of the shipment.

(B) Imported PCB waste shall be manifested separately from domestic PCB waste.

(C) In place of the generator's name, address and EPA identification number on the manifest, the name and address of the foreign generator and the importer's name, address and EPA identification number shall be used.

(D) In place of the generator's signature on the manifest certification statement, the importer shall sign and date the certification and obtain the signature of the initial transporter.

(E) The importer shall comply with all other requirements of subpart K of this part which apply to the generator.

(F) The date of removal from service for disposal shall be determined according to paragraph (b)(2)(ii)(C) of this section.

(c) *PCB analytical samples.* PCBs and PCB Items at concentrations of 50 ppm or greater may be imported into the

United States by a laboratory, commercial storer or disposer of PCB waste under paragraph (a)(1)(iv) of this section, without prior notification, for purposes of chemical analysis to determine the physical and chemical properties of the PCBs and PCB Items, provided:

(1) Quantities of PCBs and PCB Items imported by an individual facility shall not exceed 200 kilograms annually for non-liquids, and 25 liters annually for liquids; individual samples cannot exceed 5 kilograms for non-liquids or 25 milliliters for liquids.

(2) Unused and residual PCB waste remaining after analytical use is completed shall be marked, stored, manifested, and disposed of in accordance with subparts C, D, and K of this part.

(3) PCB waste is handled by laboratories in compliance with § 761.65(i).

(4) A TSCA PCB commercial storage approval is required for each laboratory, unless a total volume of no more than 500 gallons (1.89 cubic meters) of PCB waste is in storage at any one time.

(d) *Treatability studies.* PCBs and PCB Items at concentrations of 50 ppm or greater may be imported into the United States under paragraph (a)(1)(v) of this section, without prior notification, for purposes of evaluating the effectiveness of a disposal technology, provided:

(1) The importer receiving the PCB waste is an approved disposer of PCB waste under 40 CFR part 761, subpart D.

(2) The quantity of PCB waste imported annually to a disposal facility does not exceed a total volume of 500 gallons.

(3) The imported PCB waste does not exceed a concentration of 10,000 ppm PCBs, and no more than 1 kilogram total of pure PCBs is imported annually.

(4) PCB waste imported under this paragraph must be marked, stored, and

manifested in accordance with subparts C and K of this part, and must comply with paragraphs (b)(2)(ii) and (b)(3) of this section.

(5) PCB waste imported under this paragraph, including residues from any treatability study, must be disposed of in accordance with the terms and conditions of the TSCA disposal approval for the facility performing the treatability study.

**§ 761.97 Export for disposal.**

(a) General provisions. No person may export PCBs or PCB Items for disposal without an exemption, except that:

(1) PCBs and PCB Items at concentrations less than 50 ppm may be exported for disposal.

(2) [Reserved]

(b) [Reserved]

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