

and may grant an exemption for a period of not more than 1 year from the date the petition is granted. In addition, TSCA section 6(e)(4) requires that a rule under TSCA section 6(e)(3)(B) be promulgated in accordance with TSCA sections 6(c)(2), (3), and (4), which provides for publication of a proposed rule and an opportunity for an informal public hearing before a final rule can be issued.

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

EPA's procedures for rulemaking under TSCA section 6 are found under 40 CFR part 750. This part includes Subpart B—Interim Procedural Rules for Manufacturing Exemptions (40 CFR 750.10 through 750.21) that describe the required content for manufacturing exemption petitions and the procedures EPA follows in rulemaking on these petitions.

III. Findings Necessary to Grant Petitions

A. Unreasonable Risk Finding.

Before granting an exemption petition, TSCA section 6(e)(3)(B)(i) requires the Administrator to find that granting an exemption would not result in an unreasonable risk of injury to health or the environment in the United States. To determine whether a risk is unreasonable, EPA balances the probability that harm will occur to health or the environment against the benefits to society from granting or denying each petition (see generally, 15 U.S.C. 2605(c)(1)). Specifically, EPA considers the following factors:

1. *Effects of PCBs on human health and the environment.* In deciding whether to grant an exemption, EPA considers the magnitude of exposure and the effects of PCBs on humans and the environment. The following discussion summarizes EPA's assessment of these factors. A more complete discussion of these factors is provided in the preamble to the proposed rule: Polychlorinated Biphenyls; Manufacturing, Processing, and Distribution in Commerce Exemptions (Ref. 3), in the rulemaking record for that proposed rule (OPTS Docket-66008F), 40 CFR 761.20, and in EPA's 1996 PCB Cancer Assessment (Ref. 32).

i. *Health effects.* EPA has determined that PCBs cause significant human health effects including cancer, immune system suppression, liver damage, skin irritation, and endocrine disruption. PCBs exhibit neurotoxicity as well as reproductive and developmental toxicity. PCBs are readily absorbed

through the skin and are absorbed at even faster rates when inhaled. Because PCBs are stored in animal fatty tissue, humans are also exposed to PCBs through ingestion of animal products (Ref. 32).

ii. *Environmental effects.* Certain PCB congeners are among the most stable chemicals known, and decompose very slowly once they are released in the environment. PCBs are absorbed and stored in the fatty tissue of higher organisms as they bioaccumulate up the food chain through invertebrates, fish, and mammals. Significantly, bioaccumulated PCBs appear to be even more toxic than those found in the ambient environment, since the more toxic PCB congeners are more persistent and thus more likely to be retained (Ref. 32). PCBs also have reproductive and other toxic effects in aquatic organisms, birds, and mammals.

iii. *Risks.* Toxicity and exposure are the two basic components of risk. EPA has concluded that any exposure of humans or the environment to PCBs may be significant, depending on such factors as the quantity of PCBs involved in the exposure, the likelihood of exposure to humans and the environment, and the effect of exposure. Minimizing exposure to PCBs should minimize any eventual risk. EPA has previously determined that some activities, including the disposal of PCBs in accordance with 40 CFR part 761, pose no unreasonable risks. Other activities, such as long-term storage of PCB waste, are generally considered by EPA to pose unreasonable risks.

2. *Benefits and costs.* The benefits to society of granting an exemption vary, depending on the activity for which the exemption is requested. The reasonably ascertainable costs of denying an exemption vary, depending on the individual petition. EPA takes benefits and costs into consideration when evaluating each exemption petition.

B. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA also requires the Administrator to find that "good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for [PCBs]." EPA considers several factors in determining whether good faith efforts have been made. For each petition, EPA considers the kind of exemption the petitioner is requesting and whether the petitioner expended time and effort to develop or search for a substitute. To satisfy this finding in the context of an exemption to import PCBs for disposal, EPA looks at why such activity should

occur in the United States, including what steps the petitioner has taken to find an alternative to importing the PCBs for disposal. While requiring a petitioner to demonstrate that good faith efforts to develop a substitute for PCBs makes sense when dealing with traditional manufacturing and distribution exemption petitions, the issue of the development of substitute chemicals seems to have little bearing on whether to grant a petition for exemption that would allow the import into the United States for disposal of waste generated by the DoD overseas. EPA believes the more relevant "good faith" issue for such an exemption request is whether the disposal of the waste should occur outside the United States.

IV. Summary of the Final Action

A. The Petitions

1. *January 19, 2001, petition to import PCBs located on Wake Island.* On January 19, 2001, DLA submitted a petition for a 1-year exemption to import certain PCBs and PCB items into the Customs Territory of the United States for disposal. The waste in question consists of approximately 91 metric tons [a metric ton is 1,000 kilograms, or 2,200 pounds] of material, of which 31 metric tons DLA estimates to be liquids. Non-liquid material consists of electrical transformers, switches, circuit breakers, and debris (rags, small parts, and packaging materials). The laboratory analyses conducted by DLA indicate PCB concentrations of less than 50 parts per million (ppm) for all materials that could be tested without disassembly. DLA indicates that while it believes any components that could not be tested were excluded from this waste in question, there is a possibility that inaccessible internal components (e.g., small capacitors) of certain transformers may contain PCB constituents at or above 50 ppm.

The material is currently stored in overpack containers at a U.S. Government-owned storage site on Wake Island. DLA proposes to ship the materials in these containers to the Customs Territory of the United States using U.S. flag carriers, and in accordance with applicable laws. Upon arrival in port, the containers would be transported by Department of Transportation (DOT) permitted carriers to the destination facility. On April 16, 2001, DLA also amended its petition to include the possibility that the materials could be transported by air on U.S. military aircraft.