

TO AUTHORIZE TEMPORARY EMERGENCY EXTENSIONS TO CERTAIN EX-
EMPTIONS TO THE REQUIREMENTS WITH RESPECT TO POLY-
CHLORINATED BIPHENYLS UNDER THE TOXIC SUBSTANCES CONTROL
ACT

SEPTEMBER 14, 2006.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. BARTON of Texas, from the Committee on Energy and
Commerce, submitted the following

R E P O R T

[To accompany H.R. 5863]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 5863) to authorize temporary emergency extensions to certain exemptions to the requirements with respect to polychlorinated biphenyls under the Toxic Substances Control Act, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 5863 is to allow for the authorization of a temporary emergency extension of a certain exemption to the re-

quirements concerning polychlorinated biphenyls in the Toxic Substances Control Act (TSCA).

BACKGROUND AND NEED FOR LEGISLATION

The Department of Defense (DOD) and its services and supplies adjunct, the Defense Logistics Agency (DLA), have been stockpiling PCB laden equipment in its warehouses overseas, particularly in Japan. This equipment, in part consisting of electric transformers, capacitors, voltage regulators, circuit breakers, and electric cable, which were manufactured both in the United States and abroad, is nearing the point of completely filling existing warehouse space. DOD and DLA are currently seeking ways to properly remove and dispose of this equipment to help alleviate storage capacity concerns.

Under regulations promulgated pursuant to Section 6(e) of TSCA, no person may import equipment with PCBs into the United States for disposal, treatment, or storage if those PCBs or the equipment containing those PCBs were created in a foreign country. Items containing PCBs that were created in the United States, even if they are used overseas, are not subject to this provision of law. Section 6(e)(3)(B) of TSCA, however, allows the Administrator of the U.S. Environmental Protection Agency (EPA) to grant a one year waiver from these requirements for a specific petitioner if that petitioner can demonstrate that the grant of a waiver by EPA will: (1) not result in an unreasonable risk to human health or the environment and (2) good faith efforts have been made by the petitioner to develop alternatives to PCBs that would not present an unreasonable risk of injury to health or the environment.

In past years, DOD/DLA have relied upon the existing petition and waiver process from TSCA Section 6(e)(3)(B) to ship foreign generated PCBs along with U.S.-generated PCBs back into the United States for disposal, treatment, or storage through contracted private parties. For example, in 2003, the Administrator granted a one-year exemption to DLA who successfully removed over 2.7 million pounds of PCB contaminated equipment from Japan. Another petition to ship foreign generated PCBs is currently pending with EPA.

However, while this arrangement has worked, DOD/DLA are concerned that one-year alone might be too tight of a time frame because it does not allow much room for unexpected shipping delays. For example, during the 2003 waiver period, the ship carrying DOD's last shipment of foreign generated PCBs caught fire, had to return to Japan, and nearly did not make it to U.S. customs territory before the one year waiver expired. Had that shipment not made it to port in the United States, the ship would have been prohibited from docking and unloading its cargo in the United States. The Committee expects that DOD/DLA will minimize the possibility of a problem caused by unexpected shipping delays by scheduling the shipments well in advance of the end of the one year exemption period.

Based on this past experience, DOD/DLA has recently expressed heightened concerns about the potential of a TSCA Section 6(e)(3)(B) exemption expiring while a shipment of foreign generated PCBs is in transit. DOD has been working with the State Department to find PCB disposal capacity. Currently, Japan—where

DOD/DLA's greatest concerns lie—has no immediate capability to dispose of PCBs and does not expect to have the capability for several years. Since U.S. military activities will continue to generate domestic and foreign PCBs for many years as existing equipment comes out of service, DOD/DLA are seeking an amendment to TSCA Section 6(e)(3)(B) to extend the waiver period for DOD/DLA importation of foreign manufactured PCB equipment.

On June 22, 2006, the Senate passed H.R. 5122, the National Defense Authorization Act for fiscal year 2007. Section 322 of the Senate passed version of H.R. 5122 contains language that would amend TSCA Section 6(e)(3)(B) to allow EPA to grant an exemption for up to three years to the Secretary of Defense and the Secretaries of the military departments to transport PCBs generated by, or under the control of DOD into the United States for purposes of their disposal. In addition, Senate Section 322 would sunset in 2012 and require a report on DOD and DLA stockpiles of foreign generated PCBs by 2012. The House passed version of H.R. 5122 did not contain similar provisions. H.R. 5863 responds to Section 322 of the Senate passed version of H.R. 5122.

HEARINGS

The Committee on Energy and Commerce has not held hearings on the legislation.

COMMITTEE CONSIDERATION

On Wednesday, July 26, 2006, the Committee on Energy and Commerce met in open markup session and ordered H.R. 5863 favorably reported to the House, without amendment, by a voice vote, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 5863 reported. A motion by Mr. Barton to order H.R. 5863 favorably reported to the House, without amendment, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has not held oversight or legislative hearings on this legislation.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 5863 is to authorize a temporary emergency extension to certain exemptions to the requirements with respect to polychlorinated biphenyls under the Toxic Substances Control Act.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 5863, to authorize a temporary emergency extension to certain exemptions

to the requirements with respect to polychlorinated biphenyls under the Toxic Substances Control Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, August 3, 2006.

Hon. JOE BARTON,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5863, a bill to authorize temporary emergency extensions to certain exemptions to the requirements with respect to polychlorinated biphenyls under the Toxic Substances Control Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

H.R. 5863—A bill to authorize temporary emergency extensions to certain exemptions to the requirements with respect to polychlorinated biphenyls under the Toxic Substances Control Act

Under the Toxics Substances Control Act, no person may import polychlorinated biphenyls (PCBs) into the United States for disposal, treatment, or storage if those PCBs or the equipment containing those PCBs were created in a foreign country. Under certain circumstances, however, the Environmental Protection Agency (EPA) is allowed to grant exemptions from this law for up to one year. Enacting H.R. 5863 would allow EPA to extend previously granted exemptions for an additional 30 days in emergency situations. This authority to extend waivers would end on September 30, 2012.

Based on information from EPA, CBO estimates that enacting H.R. 5863 would have no significant impact on the federal budget. Enacting this legislation would not affect direct spending or revenues.

H.R. 5863 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Susanne S. Mehlman. This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Extension of emergency exemption authority from certain requirements

Section 1 amends Section 6(e)(3) of the Toxic Substances Control Act.

First, it creates a new subparagraph (D) that supplements the existing authority that is provided to the Administrator of the U.S. Environmental Protection Agency (EPA) in existing subparagraph (B). The new subparagraph (D) allows the EPA Administrator to extend, if notified of an emergency situation, an exemption granted pursuant to existing subparagraph (B) for a period of not more than 30 days for the purpose of authorizing the safe, effective, and efficient shipment into the customs territory of the United States of foreign generated polychlorinated biphenyls for purposes of their disposal, treatment, or storage in the customs territory of the United States.

Section 1 also sunsets the EPA Administrator's authority to grant an extension of an exemption on September 30, 2012. If, however, a 30-day extension of an exemption has been granted prior to September 30, 2012; such extension of the exemption shall be fully carried out as issued.

Finally, not later than March 1, 2011, Section 1 requires that any person or entity who has been granted an exemption pursuant to section 6(e)(3)(B) of the Toxic Substances Control Act, after the enactment of new subparagraph 6(e)(3)(D), shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Rep-

representatives a report on the status of foreign-manufactured polychlorinated biphenyls generated by or under the control of that person or entity outside of the United States. The report shall address the remaining volume of such foreign-manufactured polychlorinated biphenyls that may require shipment into the customs territory of the United States for disposal, treatment, or storage; the efforts that have been made by that person or entity or related Federal entities to reduce such volumes of foreign manufactured PCBs and the development of alternative options for the disposal, treatment, or storage of such PCBs.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 6 OF THE TOXIC SUBSTANCES CONTROL ACT

SEC. 6. REGULATION OF HAZARDOUS CHEMICAL SUBSTANCES AND MIXTURES.

(a) * * *

* * * * *

(e) POLYCHLORINATED BIPHENYLS.—(1) * * *

* * * * *

(3)(A) Except as provided in [subparagraphs (B) and (C)] *subparagraphs (B), (C), and (D)*—

(i) * * *

(B) Any person may petition the Administrator for an exemption from the requirements of subparagraph (A), and the Administrator may grant by rule such an exemption if the Administrator finds that—

(i) * * *

* * * * *

An exemption granted under this subparagraph shall be subject to such terms and conditions as the Administrator may prescribe and shall be in effect for such period ([but not more than one year from the date it is granted] *but not more than 1 year from the date it is granted, except as provided in subparagraph (D)*) as the Administrator may prescribe.

* * * * *

(D) *The Administrator may extend, if notified of an emergency situation, an exemption granted pursuant to subparagraph (B) for a period of not more than 30 days for the purpose of authorizing the safe, effective, and efficient shipment into the customs territory of the United States of polychlorinated biphenyls for purposes of their disposal, treatment, or storage in the customs territory of the United States.*

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